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JAMES D. MAHER

NO. 979

IN THE

# SUPREME COURT OF THE UNITED STATES

AMERICAN STEEL FOUNDRIES,
*Petitioner,*
*vs.*
THE TRI-CITY CENTRAL TRADES COUNCIL ET AL.,
*Respondents.*

## PETITION FOR WRIT OF CERTIORARI.

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
*Solicitors for Petitioner.*

MAX PAM,
*Of Counsel.*

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*Respondents.*

## PETITION FOR WRIT OF CERTIORARI.

*To the Honorable Supreme Court of the United States:*

The petition of the American Steel Foundries respectfully shows unto this Honorable Court that:

On the 18th day of May, 1914, petitioner filed its bill of complaint in the District Court of the United States for the Southern Division of the Southern District of Illinois, against the respondents, The Tri-City Central Trades Council, Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, C. L. Burton, Eddie Roach, John Aldridge, Isaac Cook, Benj.

F. Lamb, J. P. McDonough and C. E. Gerlich, praying, among other things, for a writ of injunction restraining the said respondents, and all other persons who have aided, abetted and assisted, as follows:

> "From in any way or manner whatsoever by use of threats, or personal injury intimidation, suggestions of dangers or threats or violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere, and from interfering by violence or threats of violence in any manner with any person, desiring to be employed by said American Steel Foundries in its said foundry or plant, and from inducing or attempting to compel or induce by threats, intimidation, force or violence or putting in fear or suggestions of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries, and that they absolutely desist and refrain from preventing any person by threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of said American Steel Foundries, and that they desist, and refrain from protecting, aiding or assisting, any person, or persons, in committing any of said acts, or from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries for the purpose of doing, or aiding or encouraging others in doing, any of the said unlawful or forbidden acts or things, and that they desist and refrain from doing any acts or things, whatever, in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or in-

terfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business, and also from ordering, directing, aiding, assisting, or in any manner abetting any person committing any or either of the acts aforesaid, and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent, and from injuring or destroying any of the property of the said American Steel Foundries."

That on said 18th day of May, 1914, a restraining order was issued in accordance with the prayer for injunction by the Judge of said District Court; on June 4, 1914, the answer of the defendants to the bill of complaint was filed, and on the same day the replication by the complainants was also filed on the 8th day of June, 1914, the cause proceeded to a final hearing upon the bill of complaint, the answer of the respondents, the replication of the petitioner to the answer, and upon the oral testimony offered on the part of the petitioner and respondents; upon the conclusion of the evidence and hearing, the court rendered his opinion, a copy of which is attached hereto as Appendix A; on the 9th day of June, 1914, a final decree was entered pursuant to the opinion of the court, from which decree an appeal was prayed and perfected to the Circuit Court of Appeals for the Seventh Circuit; on the 26th day of January, 1915, the said appeal came on for hearing in said Circuit Court of Appeals before the Honorable Frank Baker, Christian C. Kohlsaat and Julian W. Mack, Judges; on the 23rd day of

May, 1916, the Circuit Court of Appeals directed a re-argument, and upon the 8th day of June, 1916, said appeal was re-argued before Judges Julian W. Mack, Samuel Alschuler and Evan A. Evans; on the 6th day of December, 1916, the Circuit Court of Appeals reversed the decree of the District Court with directions to modify the same and to enter a decree in accordance with the views therein expressed. A copy of the opinion of said Circuit Court of Appeals is attached hereto, marked Appendix B. On the 3rd day of January, 1917, your petitioner filed its petition for re-hearing in the said United States Circuit Court of Appeals, which on the 24th doy of January, 1917, was denied.

A certified copy of the entire record of said cause in the United States Circuit Court of Appeals is herewith submitted as a part of this application, in conformity with Rule 37 of this Honorable Court concerning causes sought to be brought up from the Circuit Court of Appeals.

## POINTS AND CONTENTIONS OF PETITIONER.

### I.

The petitioner contends that upon the undisputed evidence in the record, supported by the findings of fact as expressed in the opinion of the Judge of the District Court, the Circuit Court of Appeals erroneously reversed the decree of the District Court.

### II.

Upon the undisputed evidence, supported by the findings as expressed in the opinion of the Judge of the District Court, the Circuit Court of Appeals erroneously directed a modification of the decree of the District Court.

### III.

Upon the pleadings and under the facts established by the undisputed evidence, supported by the findings of the Judge of the District Court, the law and the decisions of the Supreme Court, of the State of Illinois applied and should have been followed by the Circuit Court of Appeals.

### IV.

The Circuit Court of Appeals erroneously disregarded and declined to follow the laws and the decision of the Supreme Court, of Illinois applicable to this case.

V.

The Circuit Court of Appeals erroneously based its decision upon the authority of *Iron Moulders Union* v. *Allis Chalmers Company*, 166 Fed. Rep., 45, and misapprehended the purport and applicability of the opinion in that case.

VI.

This case arose from a conspiracy of strangers to the petitioner and its employees to injure and interfere with the business of the petitioner in the absence of any controversy or dissatisfaction between the petitioner and its employees or of any strike by its employees.

VII.

The facts in the case raise questions of law not heretofore decided by this Honorable Court, which questions are important and have a general bearing upon controversies of a similar nature arising and subject to determination in various circuits of the United States.

Your petitioner offers and submits for the consideration of the court in support of its petition the brief and argument and affidavit of William E. Wheeler following on page 8, *et seq.*, and for that purpose makes the same a part of this petition.

Your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, com-

manding the said court to certify and send to this court on a day certain to be therein designated a full and complete transcript of the record and all proceedings in the said United States Circuit Court of Appeals, in the said cause therein entitled "*The Tri-City Central Trades Council et al.* v. *American Steel Foundries,* No. 2157," to the end that the said cause may be reviewed and determined by this court as provided in Section 6 of the Act of Congress entitle, "An Act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, and that your petitioner may have such other and further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said Act, and that the said judgment of the said United States Circuit Court of Appeals in the said cause, and every part thereof, may be reversed by this Honorable Court, and your petitioner will ever pray.

MAX PAM,
HARRY BOYD HURD,
WILLIAM E. WHEELER,
*Solicitors for Petitioner.*

MAX PAM,
*Of Counsel.*

# BRIEF AND ARGUMENT FOR PETITIONER.

## STATEMENT OF CASE.

The petitioner is a corporation organized under the laws of the State of New Jersey, and authorized to transact business in the State of Illinois. For many years it has operated a plant at Granite City, Illinois. The plat introduced in evidence shows that its property is fenced and covers in the neighborhood of twenty acres of ground. Within the enclosure are some eight or nine buildings of various dimensions, the largest of these being of irregular dimensions of about 650 by 412 feet. The next largest building is approximately 225 feet by 425 feet. These buildings cover substantially one-third of the premises of the petitioner, are of various construction, some combustible and some non-combustible. The framework of the buildings is wood in a great many cases, and one is an entire wood building. (Rec., p. 32.)

In normal times the plant employs about 1600 men. It was operated as an "open shop," employing both union and non-union labor without discrimination. In November, 1913, because of depressed condition of business the plant closed and all employees were laid off indefinitely. On April 1, 1914, your petitioner undertook a partial resumption of operations at this plant, and a few men were employed at the plant to get it in running order. Prior to April 6, 1914, notices were posted about the works inviting

workmen at a reduced scale of wages, in some departments from two cents to nine cents per hour, and in a good half of the departments without any reduction, and on April 6th the plant opened on a twenty-five per cent basis of its rate of capacity, employing from 300 to 375 men. On the resumption of work, such men were hired as applied for employment at the reduced wage, and about eighty or ninety per cent of the employees were men who had been in the employ of the plant when it closed the preceding November. (Rec., pp. 32 and 51.) From the time the plant was reopened to the time of trial there had never been any dissatisfaction among the men employed nor any complaint to your petitioner from any of the employees with regard to wages. (Rec., pp. 32 and 51.)

About the 20th day of April, 1914, the Tri-City Central Trades Council sent a committee headed by Earl Galloway, its president, to the plant of petitioner to remonstrate with the management against the reduced scale of wages. Upon their application for admission at the gate of the plant, one of the members, the president, Earl Galloway, was admitted to the office of Mr. Walcher, the manager of petitioner. **Mr. Walcher inquired of Galloway if any of the committee was or represented any of the employees of the Company, to which Mr. Galloway replied that they did not.** Mr. Walcher stated that the visit of this committee was rather peculiar; that he had never heard of any complaint from any of his employees, and was very much surprised, and stated further that if any of the employees had any complaint to make in regard to wages or working con-

ditions that he was willing to listen to them as often as may be necessary. (Rec., p. 32.)

The Tri-City Central Trades Council is an organization that is composed of six delegates from local organizations, which forms a central body. There are 37 affiliated bodies, composed of the building trades, carpenters, painters, plumbers, building laborers, plasterers, lathers, moulders, electricians, machinists, mill men, barbers, bar tenders, clerks and various other trades. Each organization is entitled to six delegates. Earl Galloway, the president, testified that the object of the Council is to better the condition of the working classes; make conditions so that they can receive more of the wealth they produce and better working conditions in general, and that his membership in the Council is by virtue of being a member of the Plumber's Union.

Promptly after the interview between Galloway and Walcher, the manager of the petitioner, the respondents entered upon a conspiracy to force the petitioner to either operate its plants upon such terms as the respondent, the Tri-City Central Trades Council, should dictate or to close its plant.

In pursuance of such conspiracy, about the 22nd of April the **Tri-City Central Trades Council declared a strike at the plant, and circulated hand bills calling upon workmen and all labor to stay away from the plant as a strike was on.** (Rec., p. 30.)

In response to this action but two men, Isaac Cook and Tom Churchill (of the 375 employed) left their work (Rec., p. 30), and these men left without even making a complaint to the management (Rec., p. 30), and left only because the strike was on and they were ordered out by the respondent, Tri-City Central Trades Council.

The respondent, the Tri-City Central Trades Council, by its "strike" having brought out only two of the men working at the plant in furtherance of the conspiracy on April 24th, 1914, placed a body of pickets about the plant. These pickets were in a number of groups, usually consisting of three or four men, up to eight or ten men, in each group. Shortly after the pickets were placed about the premises, the respondents in attempting to carry out the unlawful conspiracy started upon a course of persistent assaults and acts of intimidation, and threatened to destroy the property if necessary in order to accomplish their end. The assaults were numerous, brutal and without provocation, and finally culminated in a general riot brought on by about 200 men, consisting of the pickets and those associated with them, and among whom were recognized Galloway, the president of the Council, and others of the respondents.

Written application was made by the management of the petitioner to the Mayor for protection. Protection was promised by the Mayor, but not furnished. The Mayor was a witness in behalf of the respondent Trades Council, and testified that he was a member of the Socialist Party, and elected on that ticket as Mayor of the town; that prior to his election he was a steel worker in a steel mill for about ten years, and at the present time held an honorary membership in the Amalgamated Iron, Steel and Tin Workers, and that his sympathies were with the respondents. Application was made to the Sheriff of the County for protection, and the Sheriff promised to investigate, but neither offered nor gave the plant protection. On the 18th day of May, 1914, application was made, as above men-

tioned, to the District Court for a restraining order. The order was issued on the morning of that day, and the Marshal went to Granite City that evening to serve it. After the issuance of the restraining order, and just prior to the arrival of the Marshal, a number of pickets assaulted, without provocation, two other employees of the plant, and left them lying unconscious upon the walk. From the time the restraining order was issued to the present time, the plant has operated without any trouble, and has had an abundance of capable and efficient workmen to conduct its business.

This bill was not simply to enjoin a mob and mob violence, it was not a bill commanding the keeping of the peace, nor was it a bill to restrain the defendants from organizing a union, nor from abandoning whatever employment they were engaged in. Neither the right of any laborer or any number of laborers, nor the rights of the defendants, to quit work was challenged. The scope and purpose of the bill was only to restrain an unlawful combination and conspiracy among the defendants, not employees or representatives of employees of petitioner, from interfering with the petitioner in the operation of its plant. The conspiracy aimed at involves **no right of a union to strike, nor any right of any union to call away any of its members from the work at this plant. The bill here was to enjoin a meddler and stranger from carrying out a conspiracy to force employees to strike, when the employees, themselves, did not and would not strike—and to close down the plant of the employer unless the demands of this interloper for a change in wages was granted—the employees, themselves, not asking any change.**

## BRIEF.

### I.

The petitioner contends that upon the undisputed evidence in the record, supported by the findings of fact as expressed in the opinion of the Judge of the District Court, the Circuit Court of Appeals erroneously reversed the decree of the District Court.

### II.

Upon the undisputed evidence, supported by the findings as expressed in the opinion of the Judge of the District Court, the Circuit Court of Appeals erroneously directed a modification of the decree of the District Court.

### III.

Upon the pleadings and under the facts established by the undisputed evidence, supported by the findings of the Judge of the District Court, the law and the decisions of the Supreme Court of the State of Illinois applied and should have been followed by the Circuit Court of Appeals.

### IV.

The Circuit Court of Appeals erroneously disregarded and declined to follow the laws and the decision of the Supreme Court of Illinois applicable to this case.

V.

The Circuit Court of Appeals erroneously based its decision upon the authority of *Iron Moulders Union* v. *Allis-Chalmers Company*, 166 Fed. Rep., 45, and misapprehended the purport and applicability of the opinion in that case.

VI.

This case arose from a conspiracy of strangers to the petitioner and its employees to injure and interfere with the business of the petitioner in the absence of any controversy or dissatisfaction between the petitioner and its employees or of any strike by its employees.

VII.

The facts in the case raise questions of law not heretofore decided by this Honorable Court, which questions are important and have a general bearing upon controversies of a similar nature arising and subject to determination in various circuits of the United States.

## ARGUMENT.

### I.

There were three issues of fact presented by the pleadings on the hearing in the District Court.

First, The combination and conspiracy of the respondents to injure and interfere with the property and business of the petitioner. There was no dispute of the facts on that issue. The respondents admitted calling the strike and the unlawful purpose thereof. The District Judge made his finding with reference to such conspiracy, as appears in his opinion (Appendix A, p. 75), as follows:

> This bill is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trade of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fel-

lows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests; viz., the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for the hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We wouldn't be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the man who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law and there is no other view to take of it. **This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complaint from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it.**

Second, The carrying out of the conspiracy and combination through the instrumentality of pickets, violence, assaults, and threats to destroy pe-

titioner's property. While here and there some one of the respondents sought to place a different construction upon the cause and character of the assaults, nevertheless the fact, and the evidence supporting the fact, remain practically undisputed, and upon this point the District Judge made the finding, as shown in his opinion (Appendix A, p. 78), as follows:

> The proof here sustains the averments of the bill as to the illegal combination; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal, whether that act be violent or peaceful.
>
> However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the conditions under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up to him. You don't need to line the street with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him.

> Now that is the law and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There can be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you.

And the Circuit Court of Appeals on this point says (Appendix B, page 85):

> "Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which, if carried out, would have resulted in the destruction of property. **The District Judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.**"

Third, That the respondent, Tri-City Central Trades Council, called the strike at petitioner's plant; that at the time such strike was called the plant of the petitioner was in peaceful operation; that at the time of the strike no complaint or dissatisfaction with reference to wages or working conditions existed among the employees of the petitioner, and none had been expressed to the petitioner or its management; **that none of the em-**

ployees of the petitioner were members of the respondents, Tri-City Central Trades Council; that the respondent, Tri-City Central Trades Council, did not represent any of the employees of the petitioner that the respondent, Tri-City Central Trades Council, was a stranger to the petitioner, and had no relationship to it; that the only men who responded to the call of the strike by the respondent Trades Council were Churchill, who was not a member of the Trades Council, but was a member of the Machinists' Union, and Cook, who was not a member of the Trades Council and had never been a member of any union.

The evidence in this regard is undisputed. The Circuit Court of Appeals, without justification in the record, and without evidence to warrant it, says (Appendix B, page 91):

> "Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest."

In view of this statement in the opinion of the Circuit Court of Appeals, we feel constrained to call this court's attention to all the evidence in the record on this subject.

Mr. Walcher, the manager of petitioner, testified (Rec., p. 30):

> "At no time between April 1, 1914, and the time the restraining order was issued was either

the defendants McKenny, Galloway, Thornberg, (William), Holmes, C. Thornberg, Burton, Roach, Aldridge, Lamb, Ishman, McDonough or Gerlich in the employ of the American Steel Foundries. The defendants Cook and Churchill were the only ones in our employ during that time."

Rec., p. 50:

"Question by the Court: If men were unmolested would you have any trouble filling all the places you want?

"A. I think not.

"Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none."

* * * * * * *

Rec., p. 51:

"Only two men left our employ in response to the call for the strike. We had no controversy whatever or any trouble with any of our laborers as to the wages or terms of employment. Had no complaints in regard to labor and working conditions from any one in our employ."

"When we closed in November all our employees were discharged; they were laid off indefinitely on account of closing down the plant. When we opened April the 6th we employed whoever we saw fit; whoever applied for employment at the gate. Started the plant the same as a new plant. We only had called for in round numbers, three hundred men, and laid off approximately thirteen hundred men. Eighty or ninety per cent of the employees were old men. I assume these men were members of various organizations; I can't state definitely as to that."

Earl Galloway, president of Tri-City Central Trades Council, testified (Rec., p. 57):

"I am a plumber and were never employed at the American Steel Foundries. Personally as a workman I have no interests there and didn't intend to seek employment there."

B. F. Lamb testified (Rec., p. 59):

"My business is representing the Union National Association of Machinists; I am a machinist by trade. I live in St. Louis. The Tri-City Central Trade Council is in my District, therefore I am in Granite City quite often; I have a local there and they are affiliated with the Council."

Rec., p. 61:

"I never worked for the American Steel Foundries."

W. J. Hartbeck testified (Rec., p. 62):

"I live at St. Louis, am a blacksmith, a member of the blacksmiths' union and have no connection with the Central Trades Council of Granite City."

Rec., p. 63:

"I never worked for the American Steel Foundries."

Harry McKenny testified (Rec., p. 64):

"I live in Granite City and am a steam fitter and belong to one of these unions."

Rec., p. 65:

"I am a steam fitter and did not work for the complainant in April and May, 1914. I did work for them in 1907, but quit because I was ordered to help a machinist that wasn't a union man."

Thomas Churchill testified (Rec., p. 65):

"I am a machinist. I was working for the plant when it closed down in November and

went back to work when they opened but got an increase over the new men they had, but still it was a reduction at the same time. I am connected with the machinist's labor union, am a member."

Rec., p. 66:

"At the time I went into the plant I went in under a reduction, but I was partly satisfied with what I was getting. I wasn't completely satisfied. It was the best thing I had to take at the time being and I haven't had anything better since. I didn't get a better job. **I quit because these fellows asked me to go out.**"

Ted Ishman testified (Rec., p. 67):

"I am a craneman and reside at Granite City, a member of the cranesmen's union affiliated with the Tri-City Central Trades Council."

Rec., p. 68:

"I was not working at the plant this spring after it resumed operations."

Clay Holmes testified (Rec., p. 68):

"I worked there when the plant closed in November, didn't go back to work in April on account of the reduction."

C. E. Gerlich testified (Rec., p. 69):

"I am a machinist residing in St. Louis. I worked for the complainant but haven't for two years. I belong to the machinists' union. I work at the Commonwealth plant, about two blocks away from this plant."

Isaac Cook testified (Rec., p. 70):

"I am an electrician and belong to none of the unions. I worked at the plant about three weeks after it started up."

* * * * * * *

"I went to work about a week after the plant started. I didn't know what wages I was going to get when I first went to work; I found it out when I got my first pay, on the 22nd I believe; don't remember just what day it was I quit. * * * I didn't quit as soon as I got my pay, but worked four or five days longer, and **I quit because they said there was a strike on.**"

C. L. Burton testified (Rec., p. 70):

"I reside at Granite City, an Alderman of the Fifth Ward. I work at the Madison Car Shops. In April and May I was working at the Laclede Steel Plant in Madison. I never worked for the Steel Foundries."

Edward Wade testified (Rec., p. 73):

"I am a sewer man or plumber's laborer. I am Treasurer of the Central Trades Council."

E. H. Taylor testified (Rec., p. 74):

"I am an electrician, a member of their union and of the Central Trades Council. I am on the board of trustees of the Council."

* * * * * * *

"I was not working for the American Steel Foundries."

Ed Roach testified (Rec., p. 74):

"I am a machinist, a member of their union and reside in East St. Louis."

* * * * * * *

"I haven't worked for the foundries since a year ago this month."

T. M. Cavanaugh testified (Rec., p. 72):

"At the regular meeting on April 15th of the Tri-City Central Trades Council a communication was received from the Machinists' Union

requesting that a special meeting be called of all trades working at the American Steel Foundries to arrange some plan to have the wages reinstated that were in force when the plant shut down, and the meeting was called for Sunday the 19th."

* * * * * * *

"On April 15th we had a communication from the unions representing some of the trades working at the Foundries. We had complaints from the men themselves working at the foundry. I couldn't state their names. I couldn't state the names of any employee of the foundry who made complaint. I don't know. At that meeting a couple of machinists were present who were working at the Foundries. I don't know their names. There were only two of them. I never worked for the Foundries."

We have quoted from the evidence of all the witnesses in the case, respondent or otherwise, and the court will observe that **none of them who was a member of the Trades Council was working for or was an employee of the petitioner at the time in question.** The only two employees of the petitioner, as we have above shown, who quit because of the interference by the respondent, Trades Council, were Cook, who was **not** a member of the Trades Council nor a member of any union, and Churchill, who was **not** a member of the Trades Council, though claiming to be a member of the Machinists' Union. The testimony of Cavanaugh does not support the statement in the opinion of the Circuit Court of Appeals that "many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council."

Cavanaugh testifies that they had complaints from the men themselves working at the foundry; that he can't state their names, nor state the name of any employee who made any complaint. Surely this testimony of Cavanaugh cannot be construed into proof sustaining the statement of the Circuit Court of Appeals just quoted. We repeat there is no evidence in this record that any of the employees of the petitioner except one, Churchill, was a member even of any union. The record is barren of any connection or relationship between the Tri-City Central Trades Council and the petitioner, or its employees.

## II.

### THE RULE IN ILLINOIS SHOULD PREVAIL.

The bill of complaint filed by the petitioner is based upon two sections of the Criminal Code of the State of Illinois. First, Section 46, Chapter 38, which reads as follows:

> "That if any two or more persons conspire or agree together * * * or shall post or distribute any written or printed notice in any place with the fraudulent or malicious intent wrongfully and wickedly to injure the * * * **business or employment or property of another** * * * they shall be deemed guilty of conspiracy, and every such offender * * * and every person convicted of conspiracy at common law, shall be imprisoned in the penitentiary not exceeding five years, or fined not exceeding $2,000, or both."

Then Section 158 of the same chapter, reading thus:

> "If any two or more persons shall combine **for the purpose of depriving the owner or pos-**

**sessor of property of its lawful use and management, or of** preventing by threats, suggestion of danger or any unlawful means, any person from being employed by or obtaining employment from any such owner or possessor of property, on such terms as the parties concerned may agree upon, such persons so offending shall be fined not exceeding $500 or confined in the county jail not exceeding six months."

The law of Illinois applicable to the case at bar, is well settled.

*Barnes* v. *Typographical Union,* 232 Ill., 425, in which Justice Cartwright says, at page 431:

> "It is clear that the union and its members were not in competition with the complainant in respect to labor or anything else. The members of the union had left the service of the complainants, and their only purpose was to prevent the complainant from carrying on their business. They were endeavoring to compel the complainants to submit to their dictation by depriving the complainants of their legal right to employ such laborers as they might choose. If there is a combination to injure a person because he refuses to comply with some demand where he has a legal right to refuse, there is no way of classifying such acts in furtherance of such purpose as competition. The acts alleged in the bill were directed primarily against the complainants for the purpose of doing them harm, and that sort of action is not lawful competition.
>
> "The whole scheme as set out in the bill was to injure the complainants for the purpose of compelling them to yield to the union their absolute legal right to manage their own business in their own way * * * **it follows that any intereference with that right whether by threats or intimidation or by persuasion accompanied by actual malice is a legal wrong.**"

At page 434 the court further says:

"The facts stated in the bill authorized an injunction to prevent carrying out the scheme of the defendants.

"**It is next contended that if any injunction was authorized, the injunction granted was too broad in enjoining appellants from peaceful picketing of complainants' premises and from congregating about or near their places of business for the purpose of inducing or soliciting employees to leave the employment.** It is contended that a peaceful picket line around a shop is entirely lawful. **But this court has held otherwise in Franklin Union v. People, supra, where endorsement was given to the doctrine of Beck v. Railway Teamsters' Protective Union, 118 Mich., 407, by quoting therefrom, as follows: 'To picket complainants' premises in order to intercept their teamsters or persons going there to trade is unlawful. It, itself, is an act of intimidation and an unwarrantable interference with the right of free trade.** The highways and public streets must be free to all for the purposes of trade, commerce and labor. The law protects the buyer, the seller, the merchant, the manufacturer and the laborer in the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done ten or ten hundred feet away.' The court also gave its approval to the decision in *Vegelahn* v. *Guntner,* 167 Mass., 92. In that case a patrol of two men in front of the plaintiff's factory, maintained as one of the means of carrying out the defendants' plan, was held to be an unlawful interference with the rights of the employer and the employed. The patroling or picketing of the premises was considered to have elements of intimidation, **and the court decided that the motive of obtaining better wages for themselves on the part of the defendants did not justify maintaining a patrol**

in front of the complainant's premises as a means of carrying out their conspiracy. The very fact of establishing a picket line is evidence of an intention to annoy, embarrass and intimidate, whether physical violence is resorted to or not. There have been a few cases where it was held that picketing, by a labor union, of a place of business is not necessarily unlawful if the pickets are peaceful and well behaved, but if the watching and besetting of the workmen is carried to such a length as to constitute an annoyance to them or their employer it becomes unlawful. But manifestly that is not a safe rule and furnishes no fixed or certain standard of what is lawful or unlawful. Any picket line must result in annoyance both to the employer and the workmen, no matter what is said or done, and to say that the court is to determine by the degree of annoyance, whether it shall be stopped or not would furnish no guide, but leave the question to the individual notions or bias of the particular Judge. To picket the complainants' premises was in itself an act of intimidation and an unwarrantable interference with their rights. Pickets were, in fact, guilty of actual intimidation and threats, but if they had not been, the complainants were entitled to be protected from the annoyance.

"Another supposed right of the defendants asserted by counsel is the exercise of the power of persuasion, and it must be conceded that argument and persuasion are lawful if not directed to the accomplishment of an illegal and unlawful purpose. The object of the defendants as set forth in the bill was illegal, and if there is a malevolent intent to produce an illegal result, and it is produced, it makes no difference whether it is accomplished by mere persuasion or by physical violence. (Curren v. Galen, 152 N. Y., 33.)"

In the case of *Doremus* v. *Hennessey*, 176 Ill., 608, the court speaks in the following language:

> "The law is well settled that every person shall be protected in the right to enter into contracts or in refusing to do so, as he shall deem best for the advancement of his own interests, without interference by others. No person or combination of persons can legally, by direct or indirect means, obstruct or interfere with another in the conduct of his lawful business, **and any attempt to compel an individual firm or corporation to execute an agreement to conduct his or its business through certain agencies or by a particular class of employees, is not only unlawful and actionable, but is an interference with the exercise of the highest civil right.** * * * **All parties to a conspiracy to ruin the business of another because of his refusal to do some act against his will or judgment are liable for all overt acts, illegally done pursuant to such conspiracy and for the subsequent loss, whether they were active participants or not.**"

The Circuit Court of Appeals saw fit to ignore and disregard the law of the State of Illinois as also the decisions of the Supreme Court of that State. It undertook to decide this case upon the authority of *Iron Moulders' Union* v. *Allis-Chalmers Company*, 166 Fed., 45. That case we insist is not authority in support of the decision also that the further authorities cited in support of the rule laid down in *Iron Moulders' Union* v. *Allis-Chalmers Company, supra*, deal with an entirely different kind of cases than the one at bar, and do not sustain the opinion of the Circuit Court of Appeals. Indeed, in *Iron Moulders' Union* v. *Allis-Chalmers Company*,

*supra*, Judge Grosscup in a separate opinion demonstrates that it is inapplicable to the case at bar, and prophetically anticipated just such a misinterpretation of that decision as happened in the case at bar.

In each of the cases cited by the Circuit Court of Appeals in support of its opinion there **existed a controversy between employer and employee**; a strike had been called by **the employees** and **not by any stranger** to the employer, nor **outside organization**, as in the case at bar.

As matter of fact it cannot be said that there ever was a strike in the ordinary acceptation of the term. There was here a deliberate conspiracy and undertaking on the part of this Trades Council for reasons and purposes of its own, to strike down the industry of the petitioner, to force and coerce the employees who were satisfied and contented to leave their employment, to dictate to the petitioner terms and conditions upon which it could employ its men; to substitute itself for the employer and the employee as the contracting party, and when successful in securing the withdrawal of only two men from the plant, proceeded to intimidate, assault, beat and injure the employees of the petitioner, and that not being sufficiently effective threatened to destroy the petitioner's plant.

The lexicographers have defined what a strike is, and in every instance the definition proceeds upon the theory that it is bottomed upon a controversy between **employer** and **employee**.

Bouvier's Law Dictionary defines a strike as follows:

> "A combined effort by workmen to obtain higher wages or other concessions from their employers by stopping work at a pre-concerted time."

The evidence in this record shows there was no such act by the workmen and employees of this petitioner.

Black's Law Dictionary, defining a strike, says:

> "The act of a body of workmen employed by the same master in stopping work altogether at a pre-arranged time and refusing to continue until higher wages or shorter time or some other concession is granted."

The evidence in this record shows that the body of workmen employed by the petitioner did not stop work at a prearranged time or any other time.

The Century Dictionary defines a strike to be:

> "A concerted or joint quitting of work by a body of men or women for the purpose of coercing their employer in someway as when higher wages or shorter hours are demanded or a reduction of wages is resisted—a joint refusal to work as a coercive measure."

The evidence in the case shows the men did not quit work for the purpose of coercing petitioner; on the contrary it shows the men were contented and without complaint.

In *Iron Moulders' Union* v. *Allis-Chalmers Company, supra*, the controversy arose out of a **strike of the employees** of the Allis-Chalmers Company as a result of a united effort on the part of the members of all foundries unions. And in the separate opinion Judge Grosscup called attention to the differentiation between a case involving a strike of

**the employees actually pending,** as against an effort, without such strike existing, to interfere with the business of the complainant, as occurred in the case at bar. Judge Grosscup says:

> "And it is with respect to this somewhat anomalous relationship that, as I understand it, this opinion speaks; a statement that it seems to me ought to be made to confine the opinion to the actual situation to which it is intended to relate—to differentiate what we say from what might arise in cases where, **neither strike nor lock-out pending,** persuasion is resorted to to induce other employers not to employ given applicants for employment, or to persuade employees not to take employment with given employers, **upon which questions we do not, as I understand it, express** any opinion."

Judge Grosscup in this separate opinion defines a strike as follows: "A strike is cessation of work **by employees** in an effort to get for the employees more desirable terms."

The court will find that in each of the other cases cited in support of the authority of *Iron Moulders Union* v. *Allis-Chalmers Company, supra,* there was a dispute between employer and employee and an actual "strike" by the employees.

In *Pope Motor Car Co.* v. *Keegan,* 150 Fed., 148, it appears affirmatively that there was a strike by the employees of the Pope Motor Car Company, and the strike was due to a refusal to submit to the dictation of Keegan and Keck, who were officials of the International Association of Machinists, **and that all the defendants in that case except Keegan and Keck had been in the employ of the complainant**

**company, and at the time of the filing of the bill were out on a strike.**

In *Karges Furniture Co.* v. *Amalgamated Wood Workers' Local Union*, 165 Ind., 421, it appears on April 1, the demands upon the employers not having been complied with, **all the plaintiff's employees but about twenty non-members of the union, each one acting voluntarily in concert with others, and in pursuance of the agreement and vote, quit their employment and left the plaintiff's factory.**

In *Everett* v. *Typo Union*, 105 Va., 188, it appears:

> "In September, 1905, the Typothetae finally refused to grant the eight-hour day, and thereupon the Typographical Union instructed the local unions in the different cities, of the United States (among them the City of Richmond) to declare a 'strike' where the eight-hour day was refused; and the appellants, members of Richmond Typothetae, the owners and operators of printing establishments in the City of Richmond, still refusing to grant the eight-hour day, Typographical Union No. 90, **the employees of appellants, on September 11, 1905, went out on a 'strike.'**"

In *Jones* v. *Maher*, 116 N. Y. Supp., 180, it appears that the employer in that case made certain discharges, including five foremen, and it further appears (page 182):

> "**Upon the discharge of the foremen, most of the people working under them left with them at noon, and when Schofield arrived, others, including the defendant Volkman, one of the foremen discharged that day, also left the factory. The discharged foremen and the employees**

**who had stayed out or gone out, some 70 to 90 in all, thereupon held a meeting, and with the aid and counsel of Schofield organized a strike."**

*Gray* v. *Building Trades Council*, 91 Minn., 171, was a case of boycott involving a controversy between electrical contractors and engineers and various trades.

Though this case does not involve the questions presented in the case at bar, and therefore is not an authority, yet we find the statement that **a strike must involve a quitting of the service of the employer,** and in the case at bar there was no quitting of the service by the employees of the petitioner because there was no strike by them. As is disclosed by the record, **only two employees left because the Tri-City Central Trades Council had called a strike, and not because the employees either were dissatisfied or struck.**

In *re Ex parte Heffron*, 139 Mo., 639, the statement of the facts does not clearly demonstrate the relations of the parties in the case, but it is disclosed sufficiently from the decree that the case involved the acts of the employees.

In *Jones* v. *Van Winkle Gin & Machine Works*, 131 Ga., 336, it appears clearly from the statement of the case by Presiding Judge Evans that the action was against persons who were employees of the plaintiff, but who were on a strike. It is interesting to note that the opinion in this case is authority in support of the contention of petitioner, especially as applied to picketing and the manner thereof indicated in the opinion of the court in the case at bar.

*Iron Moulders' Union* v. *Allis-Chalmers Company*, *supra*, not being authority nor justification for the decision of the Circuit Court of Appeals, the law of Illinois as expressed in *Barnes* v. *Typographical Union*, *supra*, should have been followed, especially since the action in the case at bar was based upon two sections of the statute (Criminal Code) requiring construction and having been construed by the Supreme Court of Illinois.

This court has given expression to the proper practice to be followed by the Federal courts in *Burgess* v. *Seligman*, 107 U. S., 20, where the court said:

> "Since the ordinary administration of the law is carried on by the State courts, it necessarily happens that by the course of their decisions certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate, **and the construction of state constitutions and statutes. Such established rules are always regarded by the Federal courts, no less than by the State courts themselves, as authoritative declarations of what the law is.** But where the law has not been thus settled, it is the right and duty of the Federal courts to exercise their own judgment; as they also always do in reference to the doctrines of commercial law and general jurisprudence. So, when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision of the state tribunals, the Federal courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State courts after such rights have

> accrued. **But even in such cases, for the sake of harmony and to avoid confusion, the Federal courts will lean towards an agreement of views with the State courts if the question seems to them balanced with doubt.** Acting on these principles, founded as they are on comity and good sense, the courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State courts."

This is peculiarly a case where the rule of law as laid down by the Supreme Court of Illinois should have been followed by the Circuit Court of Appeals. The petitioner invoked protection under two sections of the statutes of Illinois. The District Judge in deciding the case refers to the fact that the petitioner brought its bill upon the theory of a combination and conspiracy prohibited by the sections of the statutes of Illinois above quoted. The District Judge said:

> "This appeal is brought upon a theory different from most of the bills in the books. This bill charges a combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now, such a combination is unlawful."

None of the cases cited by the Circuit Court of Appeals in support of its decision deals with a case or with facts similar to those existing in the case at bar.

## III.

MODIFICATION OF DECREE ERRONEOUS.

The modification of the decree granting a final injunction is contrary to the established law and the decisions of the Supreme Court of Illinois, and under the facts and the evidence was erroneous and a serious injury to the petitioner and its business and property. We have quoted the finding of the District Judge as to methods used by the Trades Council in its interference with the employees of the petitioner; the methods practiced by the Trades Council in its picketing of the petitioner's property and plant; its "persuasion" by blows or bludgeon; and threats of violence against the employees, and destruction of the petitioner's plant; its "lawful" picketing by intimidation, assaults, violence, and thuggery.

The Circuit Court of Appeals in its opinion accepted the opinion of the District Judge in this regard.

The evidence in support of these findings appears in the record as follows:

A. WALCHER testified as follows:

As works manager threats had been carried to me by third persons from the pickets to the effect that if this strike was not settled they would resort to burning out the plant and destroy the property, if necessary, in order to accomplish their end. * * *

Other men besides the defendants were engaged in picket duty around the plant. These pickets would stand around in groups of eight or ten, two and three groups. Some of these I recognized as ma-

chinists, others as workmen that had worked around Granite City at various times, various outsiders. (Rec., 30.)

STEVEN HAFNER testified as follows:

* * * On April the 30th as I came to work to the plant I go down on Neideringhaus avenue along side of the Wabash station. I saw Churchill, Gerlich, and Cook on Neideringhaus avenue that day. They was out on the walk about ten feet away from the track from the station there and jumped in front of me. They didn't say nothing, only Tom Churchill say, "You can't go this way." And I said, "Yes, I can." And he jumped on me and beat me up; I didn't see the two fellows coming behind; Tom Churchill jumped in front of me and stopped me and I didn't see the other two men come at all, and all at once I got hit in the face and all over, and then I went over to the cars; I couldn't hardly stand and braced up in a car; the time I was going over to the cars one fellow his name is McKenny he was going to get after me again and I said I wouldn't go into the plant; I was going back home; I was going to brace up over in the cars. I went home; couldn't go into the shop any more. I was feeling awfully dizzy all day long; still dizzy yet sometime on account of them hitting me. * * *

Churchill, McKenny and Cook all hit me, they knocked me down. They hit me in the face; I don't know where they did hit me; couldn't see fast enough how they did come on me, then I went between the cars and braced up a little and then I went back home. (Rec., 33.)

FRANK HEDSTRUM testified as follows:

* * * On May 8th I saw them on Niedringhaus avenue by the Wabash depot. A bunch of about fifteen or twenty of them came in the direction of four or five of us calling us vulgar names and we went on past the depot on the left hand side of the

shop on Niedringhaus avenue. The men at the depot followed us and commenced assaulting us. One of them hit me on the hand with a rock. As a result I was in a dazed condition and had to have a doctor care for my hand. On May 18 Ire Crawford and myself were walking to work about five o'clock in the evening.

We were coming down the street when we were intercepted by some men at the corner of 21st and B streets, about 4½ blocks from the plant. There were about twenty-five men in the bunch. Some man whose name I do not know said, "Don't go in to work." And the next thing I remember I found myself getting up and nobody around, except some school children and Crawford. Crawford was getting up from the ground where he was knocked unconscious as well as myself, and this gang of twenty-five men were all gone. I was rendered unconscious by being struck over the head with some blunt instrument. The right side of my face was swollen from being hit with something on the jaw, it was all swollen and sore down to my collar bone. My head was swelled and sore also; there was a knot about the size of a pigeon egg on the side of my head.

On the morning of May 14 I saw Ted Ishman close to the Wabash depot, he said to me that we would continue going into work until we got our heads knocked off. (Rec., 34.)

Ira Crawford testified as follows:

I have been working for the American Steel Foundries about six or seven weeks, running a crane on the night shift. On the morning of May the 8th, as I was coming from work I saw a bunch of about twenty men near the Wabash depot. I recognized Ishman and Dangles in the crowd. The crowd followed us around the depot calling us vile names and the next thing I knew there was a fight come off. They hit us, struck me in the back with something and on the arm, and struck at me at different times.

On May 18 I left the house about a quarter to five o'clock with Hedstrum. The only man that I recognized in that crowd was Dangles. They jumped on to us and beat me up with a club of some kind; hit me on the head; hit me on the back with a brick and I don't know what else. I was knocked unconscious and my head cut open. I don't think I was unconscious long. When I came to I saw men running near C. Street towards town. As a result of this assault I couldn't work for two weeks and was treated by a doctor. My face was cut and my head cut and bruised. My left arm was so I couldn't use it and it still bothers me. (Rec., 35.)

W. C. QUINN testified as follows:

* * * When I finished my day's work on night of May the 13th I and eight others left the plant about eight minutes to six and walked out Neideringhaus avenue across the track and past the depot. We passed Ted Ishman and Galloway at the depot with four or five other fellows, and they said, "There they go," and at the same time Galloway drops his hand and we walked up the street. We walked up the street two or three hundred feet and a gang of men about sixty-five or seventy of them came around the corner from behind a brick pile. From the other side of the street was about a likewise number; at the head of the bunch on this side of the street was Hartbeck, and just as we got from about twenty feet from the street car track this fellow hit Kelly in the face and at the same time he says, "There, you scabbing s— of b—; don't let him get away from you;" and I tried to cut across the field and they Shillalahed me with bricks and likewise the rest of them. The bunch that was at the station came from behind. I was struck by these brick bats in too numerous places to mention. I was struck mainly on the back and on the side of the left temple, and on the right jaw, also on the arms. I was knocked unconscious for about fifteen or twenty minutes and when I regained consciousness all of these men had

disappeared. As a result of this I couldn't perform my duties for the next week and have had a continuous headache ever since. I was never troubled with headaches before.

On May the 6th I saw Ted Ishman on the corner of Eighteenth street and he told me if we continued to work down there we would get hurt. He said there wouldn't be any of us go in there the following Monday if they had to kill us all. I started sleeping in the plant on the night of the 14th and have slept there up until last Monday. I slept on a board the first couple of nights and then on a cot. I slept in the plant because I didn't like to battle my way through all the time. I was followed continually across the river and on this side of the river, too. On one occasion I was followed by a man whose name I do not know and I caught six different street cars trying to escape and finally I caught a taxicab and got away from him. On the following day I met this same fellow and two others on the corner of Fifteenth and Chestnut streets in St. Louis. This fellow came in front of me and two fellows behind me and just as he got to me he said, "This is the scabbing b—d," and struck at me, and the two fellows from behind rushed up at me and I had to defend myself and I knocked one man down and got the other fellow down, and the other fellow ran. (Rec., 36-37.)

Frank Melton testified as follows:

I went to work for the complainant on April the 13th, worked about ten days and was off then until the 7th of May when I again went to work. That day I went across Niedringhaus Avenue on the south side of the plant to Compton's Restaurant; while I was in there this fellow here (pointing out defendant Gerlich in the court room) come up to me. He was the leader of these fellows. Guess there were twenty of them in there while I was eating dinner and they surrounded me. He came up and commenced to bulldoze me, and said, "Say you,

don't you know there is a strike on here?" He told me if I didn't stay out of that shop they would beat my damned head off and I sat and eat awhile, and I told them I thought I would quit that night beings they were getting so strong with it, and they kept getting louder all the time and getting closer to me all the time. When I told him I would quit that night, he said, "You won't do it no such a damn thing; you have seen your last time in that shop. You are quitting right now." There was a heat to come down in a few minutes; they had me tied up and wouldn't let me in; I was pouring man. I told them I had a motorcycle in the shop and would have to get that out, so they gave me fifteen minutes to get out of there, and on account of their threatening attitude I was afraid to go back there to work. I went to work and worked one day after that and that night they jumped me in East St. Louis right near my home. I don't know who jumped me. One of them said, "There is that crane man at Granite City." One threw a brick but never hit me, and one ran over and knocked me down; don't know what it was, a hammer or something he had in his hand; hit me in the back and knocked me down; I was laid up for over a week; couldn't use my back, and struck me in the face and I was cut on the arm. This happened about the 14th of May. I don't know who struck me, it was done after dark and I couldn't very well recognize who it was.

I was satisfied with the terms of my employment and I am willing to work there, but I am afraid to work. (Rec., 38.)

WILLIAM FRANCIS testified as follows:

* * * When I left the plant on the night of April 29 I saw Tom Churchill about eight feet from the depot with ten or twelve other men among them was Wm. and C. Thornberg. They were all in the gang together. Churchill said, "If we didn't stay out in a decent manner they would make us stay out."

On the following morning I went to work with Steven Hafner. We met Thornburg and Churchill and they took Steve away from me and kicked him and beat him in the face with their fists and feet, they then ran away.

I saw the Blacksmith Freddy that morning. I saw him get whipped; knocked down. He come on the north side of the depot and Churchill, the two Thornbergs and three or four more fellows were on the south side. They headed him off around the car and they commenced whipping him and knock him down and beat him. There were about nine or ten of them in the assault. Freddy was unable to work and went home.

On the 13th of May there was trouble on Neideringhaus avenue about a half a block from the plant. There were nine men with me and I seen a world of men coming three directions. Some from behind the stamping works, south of the stamping works; some was coming north and when we passed by a gang at the depot we were in the middle of the three gangs. They commenced throwing bricks. I recognized two or three standing around there. Bricks was being thrown so fast I got behind a post. As I was going by the depot I recognized two or three of them. I recognized Churchill, Hartbeck and Galloway. Galloway was at the depot. A bunch of these men came in from behind us after we got past the depot. I saw workmen with me that were struck with bricks. A man got knocked down with a brick; one got hit in the ear with a brick. Mr. Quinn got knocked flat down unconscious. Mr. Patty over there got knocked down. It lasted about ten or fifteen minutes and then the gang run away in different directions. I got behind a post and didn't get a scratch.

Freddy was about eighty or ninety feet from the works when he was assaulted. Churchill and McKenny assaulted him. I don't know what Freddy said. I was about twenty feet from them. They did not molest me. Freddy didn't strike them.

Churchill and Hartbeck was in the fight on May the 13th. Don't know how many men were there; there was a world of them. I saw this fellow here throw a brick, I recognized him and the two fellows before the big crowd come up there, but the other gangs hadn't met us. And the crowd at the depot came up behind. (Rec., 39-40.)

J. E. Bell testified as follows:

I am working for the Steel Foundries as a crane man. I was working there on the 13th of May. On leaving our work eight or nine of the workmen went up Niedringhaus avenue together. A bunch of men came from behind the stamping works, one came back of us and one from the side; kind of corralled us, threw bricks and everything at us. I was struck in the back and arms with bricks. About the 8th or 9th of May I had a talk with McKenny. He told us if we didn't quit working they would cripple us so that we couldn't get there the next Monday morning. I have been satisfied with the terms of my employment there at the plant. (Rec., 41.)

Edwin Baker testified as follows:

I run the Royal Hotel in Granite City. I draw my trade mostly from the working people, and some of the employees of the complainant board with me. I know who the colored porter is that works for the complainant, he comes to my place for meals. On May 9 he came to my hotel with an order for two meals from officials at the complainant's plant. I packed them in two baskets and a bucket of coffee and handed them to him. He left my place and in about fifteen minutes came back as hard as he could run; ran in the restaurant and through kitchen where I happened to be. He did not have the baskets with him at that time.

About three minutes after the porter got there three men came into the place. I didn't know any of them: the spokesman said his name was Harris. He asked me if I was feeding men from the American

Steel Foundries. I told him that I was and they told me if I didn't quit feeding them they would ruin my business and see that I didn't get any more union men. (Rec., 42.)

O. P. FLOYD testified as follows:

I know the colored man, the porter at the plant. I sent him to this hotel to get those meals. I saw him coming back to the plant. As he was on the tracks coming to the plant he had the two breakfasts I sent him for in a couple of ordinary market baskets. At this point he was stopped by Churchill, Gerlich and two other men whose names I do not know. They forcibly jerked the baskets away from him and threw them on the tracks and kicked the contents of the baskets over the tracks and broke up the dishes and the negro went back the other way. He didn't come to the plant at all. (Rec., 42.)

VALLEY CRABTREE testified as follows:

I have worked for the complainant continuously since March 29th. On May 8th I left my work about 7:15 in the morning to go home; Hedstrum and Crawford, fellow employees, were with me. As we were going on Neidieringhaus avenue near the depot I met a bunch of about fifteen assaulters. I only knew Ishman and Warden in the bunch. They come up in front of us and called us vile names; whether they were addressed to me or not I don't know; never had anything said to me before. They followed us in around the depot and the next I knew Mr. Ishman and another fellow struck me with their fists. The fight started and lasted just a few seconds and the policemen came along and arrested us three employees, Mr. Ishman and another gentleman.

I had no other trouble. I am a furnace helper in the plant and satisfied with my employment there. (Rec., 43-44.)

THOS. CANTRELL testified as follows:

I am working for the complainant, starting there May the 13th. I left the plant that night about 6:10 o'clock, and when I got down about a half a square from the Wabash Depot it seemed to me there were about two hundred men surrounded us. I recognized one man, Ted Ishman. I saw him throw a brick and strike Mr. Stark with it. Stark was covered with blood; I took him across the street and met four other guys, but I can't identify them; they started hurling bricks at me; some hit me on the back and I made my get-away towards the plant. I stayed in the plant until about 8 o'clock and then four officers escorted us to the Royal Hotel. I went back to work and the next morning and for five or six days slept in the plant. I slept on tables until they got cots. (Rec., 44.)

ADOLPHUS HILEMAN testified as follows:

I started to work for the complainant along the first part of April and quit working April 25. On the evening of April the 24th I saw quite a crowd; Lamb and Ishman was with them. They asked me to stay out, that there was a strike on there; I told them I would go in and pour the heats and then come out, and a fellow said, "Go on in and scab then and we will catch you when you come out." On the evening of April 24 I was met by Ishman, Holmes and Paddey about six blocks from the plant. They said the machinists called a meeting and decided to get everybody that went in there and knock their blocks off and I had better stay out. Paddey said the machinists would do that; they didn't say they would do it. On April 25 I saw Horace Howard and Harry McKenny. I was on the inside of the fence talking to them through the fence. When I first saw them I was sitting on the water tank by the fence about forty feet from the gate. They told me I didn't do the right thing by staying in there and scabbing; I ought to come out. I quit working there that day because they made those threats and I didn't care

to be in the trouble if there was any trouble. I was satisfied with my employment, satisfied with the terms of it and had no trouble with the company at all. (Rec., 47.)

ARTHUR GORDON testified as follows:

I am working as a craneman for the complainant; started to work on May 6th. On the evening of May 13th as I left my work I saw some of the pickets at the Wabash Depot, and when I got a little closer they started to follow behind us, and some coming up the same side of the street to meet us, and some coming from behind the stamping works, I got knocked down to the ground and they started to kick me with their boots. I don't know what I was knocked down with; it was from behind. There was a pile of bricks there. I was kicked in the forehead; on my head; had my ribs black and blue and bandaged up for about two weeks. I went to the surgeon of the plant and he bandaged my ribs. I had a big lump on my forehead. I was pretty sore; couldn't hardly breathe at all and was affected for nearly three weeks. After I was assaulted I made for the street car and got on it; they threw a pile of rocks; they didn't hit me, but hit the street car. I don't know any of the names of the men in the bunch.

Before this I had been talked to by Ted Ishman; he stopped me and told me if I didn't quit going in there they would put me out of commission. I told them I was going to work anyhow, and he said there would be none of us in the plant on Monday. I slept in the plant at nights for about a week. The first two nights I slept on a plank; after that on a cot. (Rec., 48.)

OSCAR E. HALL testified as follows:

I am master mechanic at the plant of the complainant and have been since May the 1st, 1913. * * *

About the 24th or 25th of April I had a conversation with the defendant Lamb. He said to me, "We

don't like the way you have treated our boys down here and we just come down to raise a little hell." Just before he said this he was with a party of five or six men.

Question by the Court: If men were unmolested would you have any trouble filling all the places you want?

A. I think not.

Q. Is there any dissatisfaction among the men you do employ as to wages or condition of labor? A. I have heard of none. * * * (Rec., 49-50.)

CHARLES FORTNER testified as follows:

I am now working in Alton, but on April 14 worked for the complainant, worked there from April the 6th until April the 25th. I know Holmes, Ishman and Lamb; on the evening of April 23, as I was going home, I met them about one hundred fifty feet from the plant. They asked me if I knew there was a strike on and I told them I did not; they told me there was and the best thing was to keep out of there and if I didn't they would make me. Later on I got word if I didn't cease work I would get my head beat off. I quit work on the 25th of April because I was afraid they would carry their threats into execution and beat my head off, and didn't want to get into trouble one way or the other. (Rec., 52.)

FRED STARK testified as follows:

I applied for work at the complainant's plant about four o'clock in the afternoon of May the 13th and started to work on the 14th. As I was leaving the plant about six o'clock on the evening of the 13th I went straight over the tracks to the Wabash depot, turned there and went up that street and started toward the street car; got half way up between the depot and the street car and was surrounded by about two hundred men and somebody got behind me and hit me in the ear with a rock. It busted my ear. I feel the effects at the present

time and I believe it is broke. After I was hit I started down the street back of the plant. I didn't know anybody in the crowd only by having them pointed out to me. That red-headed man back there in the courtroom I saw there. I don't know his name. He tried to stop me down by the depot as I was coming back. I pulled out my pocket knife and he jumped aside. I left the plant that night between eight and nine o'clock and came back the next morning at four. The regular time to go to work was seven o'clock. After that night I slept in the plant on a pattern table. (Rec., 53.)

HARRY MCKENNY testified as follows:

I live in Granite City and am a steamfitter and belong to one of these unions. * * *

Yes, sir, I assaulted one of the fellows there. Churchill stopped him one morning and was talking to him and I come up and asked him where he was working and he said he was going in there to work; I told him to stay away, and he said, "You G—d d—n son of b——, I will work where I please," and I hit him. We were standing at the south end of the depot; me, Churchill and some other fellow. I never tried to stop anybody from going into the plant by force. I never assaulted nobody. I talked to them; tried to talk to them in a good way. (Rec., 64.)

Where a conspiracy and a combination is entered upon to do an unlawful act, the presumption is that the methods employed for its accomplishment will be correspondingly unlawful. Where, as in the case at bar, the methods for the accomplishment of unlawful combination and conspiracy are such as are proved beyond dispute, and are also judicially determined both by the District Court and by the Circuit Court of Appeals, it is a fair presumption

that similar unlawful methods, unless restrained and enjoined, will be continued. A decree permanently enjoining such lawlessness and the further execution of such unlawful combination and conspiracy should not indulge in particularity of language, or finesse of distinction, but is properly general and comprehensive in expression. Such was the decree as entered by the District Court in this case. The modification directed by the Circuit Court of Appeals is an invitation to the respondents to renew and continue their unlawful conspiracy and combination through lawless methods, and when called into question in proper proceedings for contempt, to seek exemption from punishment by casting doubt upon a proper interpretation of the terms "lawful" and "picketing." The District Court dealt with the facts as they were and the evidence showed that the "persuasion" indulged in and contended for by the respondents was unlawful and the methods adopted by them in the conduct of their pickets, flagrant, vicious lawlessness. The District Court in dealing with that conduct properly enjoined the respondents from "persuasion" and from "picketing," and the modification by the Circuit Court of Appeals requiring the qualification of the decree by eliminating the term "persuasion" and by qualifying the term "picketing" so as to have it read "unlawful picketing" was improper, and should be reversed by this Honorable Court, and in support of this, we submit the following authorities:

In *Atchison, Topeka & Santa Fe* v. *Gee*, 139 Fed. 582, the court says, at page 584:

"But as to one phase of the case there is no denial, but practically a confession, with the alleged and boasted right to practice it. A system of 'pickets', for more than a year, around and near by places to the shops of the company, has been kept up by all the accused and others. The pretense of this picketing is the right to converse with the new employees and persuade them to quit, and the further pretense that they desire to see who are at work. This picketing is done by details of pickets, assigned by others, they taking turn. At all hours when men are going to and from work, morning, noon and evening, the workmen must go through and by pickets, sometimes two, four, six and more, at a place. At times the paths and walks are obstructed. At times the pickets are near by, making grimaces, and at times acting as if violence were intended, and at times uttering profanity and vulgarity. **There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity or peaceful mobbing, or lawful lynching. When men want to converse or persuade, they do not organize a picket line. When they only want to see who are at work, they go and see, and then leave, and disturb no one physically or mentally. But such picketing as is displayed in the case at bar by the evidence does, and is intended to, annoy and intimidate. The argument seems to be that anything short of physical violence is lawful.** One man can be intimidated only when knocked down. But the peaceful, law-abiding man can be and is intimidated by gesticulations, by menaces, by being called harsh names, and by being followed, or compelled to pass by men known to be unfriendly. Perhaps such a man may not be a bully, but is frail in size and strength, or he may be a timid man; but such a man is just as

much entitled to go and come in quiet, without even mental disturbance, as has the man afraid of no one and able with or without weapons to cope with all comers. The frail man, or the man who shuns disturbances, or the timid man, must be protected, and the company has the right to employ such."

In *Beck* v. *Railway Teamster's Protective Union*, 77 N. W., 13, the court says, at page 22:

"It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They are intended to intimidate and coerce. As applied to cases of this character, the lexicographers thus define the word 'picket': 'A body of men belonging to a trades union sent to watch and annoy men working in a shop not belonging to the union, or against which a strike is in progress.' Cent. Dict.; Webst. Dict. The word originally had no such meaning. This definition is the result of what has been done under it, and the common application that has been made of it. This is the definition the defendants put upon it in the present case. Possibly the decree is specific enough to include picketing, but we deem it our duty to place it beyond controversy."

The court in *Gompers* v. *Bucks Stove & R. Co.*, 221 U. S., 418, said:

"But the very fact that it is lawful to form these bodies (labor unions), with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve **the sacrifice of rights protected by the constitution**; or by standing on such rights, and appealing to the

preventive powers of a court of equity. When such appeal is made, it is the duty of the government to protect the one against the many, as well as the many against the one."

In *Jones et al.* v. *E. Van Winkle Gin and Machine Works,* 131 Ga., 336 (62 S. E., 237), the court says:

"Other cases similar in principle might be added, but these are sufficient to illustrate our point, which is that when strikers patrol the streets and approaches of the premises where the strike is in progress, and their number is so great, or their conduct is such, as to intimidate and coerce the employes into quitting their employment, or others from seeking employment, they are guilty of unlawful acts, and will be enjoined from a continuance of them. Sometimes the number of strikers engaged on the patrol may be so great that those intended to be affected by the demonstration will be intimidated by the number of the strikers or their sympathizers without special overt acts. The courts have repeatedly held that the assembling of strikers around the establishment of the employer in such numbers as will serve as a menace to those employed, or the keeping of patrols in front of or about the premises of the employer, accompanied by violence or any manner of coercion to prevent others from entering into or remaining in his service, will be enjoined."

Also in *Sailors Union* v. *Hammond Lumber Co.,* 156 Fed., 450 (454), the court says:

"But it is said that the injunction goes further than the law permits, in that by its language it prohibits the appellants from doing that which they have the lawful right to do. By the order of the court the appellants are enjoined 'from in any wise interfering with the crews, foremen, cooks, stewards, seamen, or

> either of them, or any of the servants or employes of the said steam schooners or steamship or either or any of them, without due process of law; * * * from in any wise interfering with the business of the said steam schooners and said steamship except by due process of law, with the business of complainant or orator of and concerning the said steam schooners and the said steamship; * * * and from in any wise conspiring, colluding or confederating together for the purpose of preventing the said steam schooners and steamship from receiving and discharging freight and passengers.' It is said that under this injunction the appellants would be in contempt if they asked one of their relatives not to go as a passenger on one of the appellee's steamers, or if they made complaint of the violation of navigation laws of the appellee's vessels, or if they exercised their right to discriminate against the appellee by shipping cargo on other vessels than those of the appellee. The language of the injunction, however, is to be interpreted in the light of the allegations and prayer of the bill, and these may make an otherwise indefinite order sufficiently specific. (*Hamilton* v. *State*, 32 Md., 348.) It is the acts set forth in the bill that the appellants are enjoined from doing," and

*Barnes* v. *Typographical Union, supra,* stating the Illinois rule which should be followed in this case:

> "**It is next contended that if any injunction was authorized, the injunction granted was too broad in enjoining appellants from peaceful picketing of complainants' premises and from congregating about or near their places of business for the purpose of inducing or soliciting employees to leave the employment.** It is contended that a peaceful picket line around a shop is entirely lawful. **But this court has held otherwise in Franklin Union v. People, supra, where**

endorsement was given to the doctrine of Beck v. Railway Teamsters' Protective Union, 118 Mich., 407, by quoting therefrom, as follows: 'To picket complainants' premises in order to intercept their teamsters or persons going there to trade is unlawful. It, itself, is an act of intimidation and an unwarrantable interference with the right of free trade. The highways and public streets must be free to all for the purposes of trade, commerce and labor. The law protects the buyer, the seller, the merchant, the manufacturer and the laborer in the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done ten or ten hundred feet away.' The court also gave its approval to the decision in *Vegelahn* v. *Guntner,* 167 Mass., 92. In that case a patrol of two men in front of the plaintiff's factory, maintained as one of the means of carrying out the defendants' plan, was held to be an unlawful interference with the rights of the employer and the employed. The patroling or picketing of the premises was considered to have elements of intimidation, and the court decided that the motive of obtaining better wages for themselves on the part of the defendants did not justify maintaining a patrol in front of the complainant's premises as a means of carrying out their conspiracy. The very fact of establishing a picket line is evidence of an intention to annoy, embarrass and intimidate, whether physical violence is resorted to or not. There have been a few cases where it was held that picketing, by a labor union, of a place of business is not necessarily unlawful if the pickets are peaceful and well behaved, but if the watching and besetting of the workmen is carried to such a length as to constitute an annoyance to them or their employer it becomes unlawful. But manifestly that is not a safe rule and furnishes no fixed or certain standard of

**what is lawful or unlawful.** Any picket line must result in annoyance, both to the employer and the workmen, no matter what is said or done, and to say that the court is to determine by the degree of annoyance, whether it shall be stopped or not would furnish no guide, but leave the question to the individual notions or bias of the particular Judge. **To picket the complainants' premises was in itself an act of intimidation and an unwarrantable interference with their rights. Pickets were, in fact, guilty of actual intimidation and threats, but if they had not been, the complainants were entitled to be protected from the annoyance.**

**"Another supposed right of the defendants asserted by counsel is the exercise of the power of persuasion, and it must be conceded that argument and persuasion are lawful if not directed to the accomplishment of an illegal and unlawful purpose. The object of the defendants as set forth in the bill was illegal, and if there is a malevolent intent to produce an illegal result, and it is produced, it makes no difference whether it is accomplished by mere persuasion or by physical violence. (Curren v. Galen, 152 N. Y., 33.)"**

There is appended a copy of the final decree of the District Court, marked "Appendix C."

## IV.

### THE TRI-CITY CENTRAL TRADES COUNCIL A STRANGER—MEDDLER.

Your petitioner contended in the Circuit Court of Appeals that the respondent, the Tri-City Central Trades Council, was a stranger to the petitioner, was a meddler in the affairs between the petitioner and its employees, and therefore it was immaterial whether the picketing was lawful or unlawful,

whether the picketing was peaceful or unpeaceful, whether the right of approach and "conversation" was with an olive branch or bludgeon.

The Trades Council was an interloper. It was a trespasser. It and its pickets had no right either upon or around the premises of the petitioner. It was indulging in a gratuitous interference between the petitioner and its employees, and was undertaking, contrary to the Statutes of the State of Illinois and contrary to the rights of the petitioner, to interfere with and injure the business and the property of the petitioner.

The Circuit Court of Appeals in disposing of that contention did not dispute petitioner's position, but stated in answer thereto that "many of the plaintiff's (petitioner's) employees at the time of the strike were members of the defendant's organization, the Tri-City Central Trades Council." (Page 9, Opinion.) This statement we have above shown, is unsupported by the evidence and is unjustified.

As stated by us at the outset in this petition, this precise question has never been, so far as we have been able to discover, submitted to this court for decision, and in our search of the reports of this court we have been unable to find any decision of that question. This question is very important. It has arisen in different circuits and jurisdictions. It is important to have this court decide whether either a trades union or an organization representing a number of local unions, or an organization representing the organizations or councils of different states, and each in turn having no direct relation to an employer, can

interfere between an employer and his employees, force and intimidate a cessation of the business operations of the employer, intimidate, beat and slug the employees who refuse to recognize a gratuitous exercise of authority, and if necessary to destroy the employer's property to attain their unwarranted ends. These ends, as in most cases of this kind, usually have a relation to a purpose re mote from the particular cause of strife and struggle and usually are intended to influence some other employer, some other business and some other situation. A particular interest being singled out which is thought most vulnerable at the moment to carry out and accomplish such an unwarranted purpose.

Let us call attention to some decisions dealing with this proposition.

The case of *Old Dominion Steamship Company* v. *McKenna*, 30 Fed. Rep., 48, was an action at law to recover damages from the Longshoremen's Union, which interfered with the business of the steamship company. The court said (page 49):

> "I have carefully considered the elaborate arguments of counsel, and examined the numerous authorities referred to. For lack of time, I can only state my conclusions:
>
> "1. All the material averments are either stated positively, or the source of information is sufficiently indicated.
>
> "2. The facts stated in the complaint and affidavit constitute a legal cause of action against all the defendants, for the actual damages suffered, for the following reasons:
>
> "(a) The plaintiff was engaged in the legal calling of a common carrier, owning vessels, lighters, and other craft used in its business, in

the employment of which numerous workmen were necessary, who, as the complaint avers, were employed 'upon terms as to wages which were just and satisfactory.'

"(b) **The defendants, not being in plaintiff's employ, and without any legal justification, so far as appears—a mere dispute about wages, the merits of which are not stated, not being any legal justification—procured plaintiff's workmen in this city and in southern ports to quit work in a body, for the purpose of inflicting injury and damage upon the plaintiff until it should accede to the defendants' demands, and pay southern negroes the same wages as New York longshoremen, which the plaintiff was under no obligation to grant; and such procurement of workmen to quit work being designed to inflict injury on the plaintiff, and not being justified, constituted in law a malicious and illegal interference with the plaintiff's business, which is actionable.**"

*United States* v. *Haggerty*, 116 Fed. Rep., 510 (C. C. W. Va., 1902):

The Guaranty Trust Company of New York filed its bill against Haggerty and others, including Mary, alias Mother, Jones, some of whom are citizens and residents of the State of Pennsylvania, Illinois, Ohio and West Virginia, asking that the defendants be restrained

"from entering and trespassing upon the lands and property of the Clarksburg Fuel Company; and to restrain them from going on or about the said company's tipples, tracks, or other property, together or individually, so long as they are not in the employment of the said company for the purpose of unlawfully preventing said company's employees in engaging and remaining in its employment; that the defendants, and

each of them, be enjoined and restrained from assembling, congregating, or camping at or near the plants, mines, and places of business of the said company's property, or at or near the residences of the said employees, and the paths and roads traveled by the said employees in going to and returning from their work, for the purpose of preventing the employees of the Clarksburg Fuel Company from entering into or continuing in said company's employment by intimidation, threats, or otherwise, whether by physical force or otherwise, and whether by actual threats or otherwise to the person, property, or families of the said employees; that they be restrained from unlawfully interfering with the management of the business of the company; that the defendants, their confederates and their associates, be, each and all of them, enjoined from assembling together in camp or otherwise, near the mines of the company, or near the residences of its employees, whereby they would be disturbed, alarmed, or intimidated from working in the mines, and preventing them from passing to and from their houses to the mines, or from doing any personal injury to the person of the employees of the said company or others who are desirous of entering into or remaining in its employment, or interfering in any unlawful way with any person who desires to go into and remain in said company's employment, and from visiting the houses and places of abode of the persons who are in the employ of the company, who are desirous of remaining in the employment of the company, for the purpose of preventing them by threats, menaces, or actual injury to their person or their property, or to the members of their family."

The Clarksburg Fuel Company was the owner of a large number of mines and mining

plants, and also owned in fee simple several thousand acres of coal lands and leased almost as many acres more. It was engaged in mining coal and manufacturing coke and shipping the same to the open market in the United States. Its production was immense and its customers resided in all parts of the United States.

There was a general strike in the anthracite regions of the State of Pennsylvania, in which a large number of persons were involved—said to be more than 100,000. Those at the head of the organization known as the United Mine Workers of America announced their intention to cause or create a strike among the miners of the soft coal regions of the United States, more particularly in the State of West Virginia, where the Clarksburg Fuel Company produced its coal, **not because of any grievance against the Clarksburg Company, but for the purpose of aiding the strike prevailing in the State of Pennsylvania, and to prevent the shipment of coal to localities that had been theretofore supplied with coal from the anthracite regions in the State of Pennsylvania.**

For this purpose the various defendants, including Mother Jones, who were known as "organizers," "agitators," and "walking delegates," representing the United Mine Workers of America, came into West Virginia, for the purpose of agitating strikes among the employees working for various coal companies, particularly the Clarksburg Company. To that end the defendants Haggerty and Mother Jones addressed various meetings composed in part of coal miners, and thereby attempted to inflame and

excite the hatred and animosity of miners towards the proprietors of the Clarksburg Company as well as others, advised the miners to quit work, and in some instances the miners were actually assaulted by the strikers, and in another instance one of the mines belonging to the Clarksburg Company was attempted to be blown up.

All of the above had a bad effect on the employees of the Clarksburg Company, which tended to intimidate those working in the mines and prevent them from continuing in their work.

The bill charged a combination and conspiracy entered into by the defendants with others to bring about a strike; that as the result of the above agitation and acts of intimidation, some of the employees of the Clarksburg Company and others were induced to strike, although most of them preferred to work and remain in the employment of the Company if they could be protected.

A temporary restraining order was entered and served upon the defendants, and the question the court has to consider in the above case is whether or not the defendants violated the court's order, and if so determine what punishment should be imposed upon them for its violation.

> "**It is to be observed that a very large portion of the miners in the employ of the Clarksburg Fuel Company do not want, in the language of one of the agitators who is enjoined, 'to lay down their picks and shovels and quit work.'** I do not question the right of the employees of this company to quit work at any time they desire to do so, unless there is a contractual relation between them and the employer which should control their right to quit. At the

same time I do not recognize the right of an employer to coerce the employees to continue their work when they desire to quit. But can it be said that where a conspiracy exists to control the employees, as in this instance, either by threats, intimidation, or a resort to any other modes usually accompanying the action of strikers, that such action upon their part is not only illegal, but a malicious and illegal interference with the employer's business? The question is its best answer. **While I recognize the right for all laborers to combine for the purpose of protecting all their lawful rights, I do not recognize the right of laborers to conspire together to compel employees who are not dissatisfied with their work in the mines to lay down their picks and shovels and to quit their work, without a just or proper reason therefor, merely to gratify a professional set of 'agitators, organizers, and walking delegates,' who roam all over the country as agents for some combination, who are vampires that live and fatten on the honest labor of the coal miners of the country, and who are busybodies creating dissatisfaction amongst a class of people who are quiet, well-disposed, and who do not want to be disturbed by the unceasing agitation of this class of people.** In the case we have under consideration these defendants are known as professional agitators, organizers, and walking delegates. They have nothing in common with the people who are employed in the mines of the Clarksburg Fuel Company. The evidence in this case shows that their only object and purpose is to get the people who are in the employment of the Clarksburg Fuel Company to go out upon a strike, as it is termed, for the purpose of compelling the owners of the mines to advance an increase in their wages. It discloses that the miners in the Pinnickkinnick mines are making an average of $4 a day in excess of their legitimate expenses, many of whom have worked

in foreign countries for less than a half a dollar a day. The defendants in this case are not laborers in the mines, and have no connection with them whatever. Their mission here is to foment trouble, create dissatisfaction among the employees in coal mines, producing strikes, which tends greatly to damage and injure the business of the employers. In this case there is no dissatisfaction among the larger number of the miners. **Only a small part of them have quit the mines from fear of intimidation, threats, and violence, but those remaining in the mines say they will quit work unless they are protected against the threats of these agitators and organizers. The strong arm of the court of equity is invoked in this case, not to suppress the right of free speech, but to restrain and inhibit these defendants, whose only purpose is to bring about strikes, by trying to coerce people who are not dissatisfied with the terms of their employment, which results in inflicting injury and damage to their employers, as well as the employees.**

"It is apparent that, if these agitators are permitted to interfere with the orderly, well-disposed miners who are anxious to work, and contented with the wages they receive, in the end this contented class of miners would, through fear, intimidation, as well as threats, be induced to throw down their shovels and picks, and cease to work in the mines, whereby the Clarksburg Fuel Company would be greatly damaged. Not only would it be greatly damaged, but it would be prevented from fulfilling its contracts for the future delivery of the product of its mines. The right of a citizen to labor for wages that he is satisfied with is a right protected by law, and is entitled to the same protection as free speech, and should be better protected than the abuse of free speech, in which the organizers and agitators indulge in trying to produce strikes."

*Casey v. Cincinnati Typographical Union No. 3*, 45 Fed. Rep., 135 (C. C. Ohio, 1891):

Casey was the proprietor and publisher of the Commonwealth, a daily and weekly newspaper published at Covington, Kentucky. He filed his bill to restrain the defendant, which is a corporation organized as a trades union or labor organization, composed of type-setters and printers, and certain individual defendants are the officers and managing agents of said Typographical Union from boycotting the complainant and his newspaper.

The defendant, Typographical Union, demanded that complainant unionize his office, that is to say, publish and conduct his paper according to the dictates of the Typographical Union, not only as to method of publication, but wages to be paid his employees, and employ only such persons that met the approval of the Typographical Union, and discharge certain persons then in complainant's employ.

The complainant refused to comply with said demands, whereupon the defendants all conspired to and did put into execution a very successful boycott of complainant's paper, the various details of which were elaborately set forth in complainant's bill of complaint. The demands of the defendant, Typographical Union, which, if complied with, would have necessitated the discharge of every printer employed by the complainant and the substitution therefor of persons wholly within the control of the Typographical Union. **There was no trouble between the complainant and his employees. Each were satisfied with the relationships existing between them. There**

**had been no complaint upon the part of the complainant's employees. The complaint came solely from other persons not having any financial interest in the affairs of the papers, none of whose members had any right to expect employment by the complainant.**

The court's opinion is rendered upon a motion for a temporary injunction and is one that is cited favorably in many subsequent authorities. The portion of the court's opinion, however, to which we invite this court's attention is found at page 146 of the report and consists principally of the approval of an opinion of Judge Carpenter of the Supreme Court of Connecticut in the case of *State* v. *Glidden*, as reported in 8 Atl. Rep., 890.

Judge Sage said:

> "In *State* v. *Glidden*, cited hereinbefore, Judge Carpenter, speaking for the Supreme Court of Connecticut, states that the defendants said in effect to the publishing company:
>
> " 'You shall discharge men you have in your employ, and you shall hereafter employ only such men as we shall name. It is true, we have no interest in your business; we have no capital invested therein; we are in nowise responsible for its losses or failure; we are not directly benefited by its success; and we do not participate in its profits—yet we have a right to control its management, and compel you to submit to our dictation.'
>
> "The court said that the bare assertion of such a right was startling; that, if it existed, all business enterprises were alike subject to the dictation and control of those who asserted it, and upon the same principle and for the same reason the right to determine what business men shall engage in, and when and where

> and how it shall be carried on, will be demanded, and must be conceded to associations of workingmen of the class of those whom it would be necessary to employ. The opinion in this case, although the case itself arose upon an indictment for conspiracy, is a well-considered discussion of the law with relation to boycotting. See, also, *Steam-ship Co.* v. *McKenna*, 30 Fed. Rep., 48."

*State* v. *Glidden et al.*, 8 Atl. Rep., 890 (Conn., 1887).

The defendants had been found guilty of a criminal conspiracy, the object of which was (1) to compel the Carrington Publishing Company, against its will, to discharge its workmen, and to employ such persons as the defendants and their associates should name; and (2) to injure and oppress the workmen then in the employ of said corporation, by depriving them of their said employment by first demanding the discharge of said employees, and upon such demand being refused, boycotting the Publishing Company.

Judge Carpenter, speaking for the Supreme Court of Connecticut, expressed the views of the court, as follows:

> "Now, if we look at this transaction as it appears on the face of this information, we shall be satisfied that the defendants' purpose was to deprive the Carrington Publishing Company of its liberty to carry on its business in its own way, although in doing so it interfered with no right of the defendant. The motion was a selfish one,—to gain an advantage unjustly, and at the expense of others,—and therefore the act was legally corrupt. As a means of accomplishing the purpose, the parties intended to harm the Carrington Publishing Company, and therefore

it was malicious. * * * The defendants and their associates said to the Carrington Publishing Company: 'You shall discharge the men you have in your employ, and you shall hereafter employ only such men as we shall name. It is true, we have no interest in your business, we have no capital invested therein, we are in nowise responsible for its losses or failures, we are not directly benefited by its success, and we do not participate in its profits; yet we have a right to control its management, and compel you to submit to our dictation.' The bare assertion of such a thing is startling. The two alleged rights cannot possibly co-exist. One or the other must yield. If the defendants have the right which they claim, then all business enterprises are alike subject to their dictation. No one is safe in engaging in business, for no one knows whether his business affairs are to be directed by intelligence or ignorance,—whether law and justice will protect the business, or brute force, regardless of law, will control it; for it must be remembered that the exercise of the power, if conceded, will by no means be confined to the matter of employing help. Upon the same principle, and for the same reasons, the right to determine what business others shall engage in, when and where it shall be carried on, etc., will be demanded, and must be conceded. The principle, if it once obtains a foothold, is aggressive, and is not easily checked. It thrives on what it feeds, and is insatiate in its demands. More requires more. If a large body of irresponsible men demand and receive power outside of law, over and above law, it is not to be expected that they will be satisfied with a moderate and reasonable use of it."

*Jersey City Printing Co.* v. *Cassidy*, 53 Atl. Rep., 230 (N. J., 1902):

The Jersey City Printing Company filed its bill asking for an injunction against Cassidy and others.

Vice-Chancellor Stevenson in his oral opinion concedes that an employer has a right to arbitrarily "dictate" to his employees in regard to matters in respect of which their conduct ought, according to correct social and ethical principles, to be left entirely free. Likewise employees with certain limitations may dictate how their employer shall conduct his business, so long as the dictation of either is backed up only by a threat of an association of the relations of employer and employee, hence, he holds that employees may inform their employer that unless he does certain things to their liking they will "strike."

At page 232 of the report the court says:

> "But the difficult case presents itself when the workmen in combination undertake to interfere with the freedom of action on the part of other workmen who naturally would seek employment where they, the workmen in combination, desire and intend that no man shall be employed excepting upon their terms. The difficulty is in perceiving how molestation and annoyance, not of the employees of a complainant, but of persons who are merely looking for work, and may become employees of the complainant, can be erected into a legal or equitable grievance on the part of the complainant. But the difficulty is still further increased where the possible employees make no complaint to any court for protection, and the conduct of the molesting party does not afford a basis which the

ancient common law recognized as sufficient to support an action of tort on their behalf, such as for an assault and battery, or a slander. Abusive language is not necessarily actionable at common law. If to call a man a 'scab' in the street, or to follow him back and forth from his home to his place of employment, was formerly not actionable on behalf of the victim of this petty annoyance, the problem is to understand how one who is merely the victim's possible employer can complain either at law or in equity; there being no actual contract for service, but only a potential one, interfered with."

Again at 234 of the report the court says:

"I think it is safe to say that, all through this development of strike law during the last decade, no principle becomes established which does not operate equally upon both employer and employee. The rights of both classes are absolutely equal in respect of all these 'probable expectancies.' An operator upon printing machines has the right to offer his labor freely to any of the printing shops in Jersey City. These shops may all combine to refuse to employ him on account of his race, or membership in a labor union, or for any other reason, or for no reason, precisely as twenty employees in one printing shop may combine, and arbitrarily refuse to be further employed unless the business is conducted in accordance with their views. But, in the case of the operative seeking employment, he has a right to have the action of the masters of the printing shops in reference to employing him left absolutely free. **If, after obtaining or seeking to obtain employment in a shop, the master of that shop should be subjected to annoyances and molestation instigated by the proprietors of other printing shops, who combine to compel, by such molestation and annoyance, this one master printer,**

> **against his will and wish, to exclude the operative from employment, this operative, in my judgment, would have a right to an action at law for damages, and would have a right to an injunction if his case presented the other ordinary conditions upon which injunctions issue."**

*Frank* v. *Herold*, 63 N. J. Eq., 443; 52 Alt., 152, 1901:

A bill was filed against upwards of eighty defendants, asking an injunction to protect the complainants from an alleged conspiracy among the defendants to prevent certain operatives of the complainants from continuing to work for them.

From the statement of facts and opinion of the court the facts do not clearly appear. There is no doubt, however, that the complainant was the owner of what is known as the "Greater Barnert Mill," in Paterson, New Jersey, and the defendants were endeavoring to persuade various women employees from continuing in the employ of complainant.

The Court says:

> **The right of a master to have a servant continue in his employ without molestation or enticement by any third party is a property right, so recognized by the law, and well within the rule laid down by Vice-Chancellor Green in Barr v. Essex Trades Council,** where he shows that the right of a man to carry on his business is a property right.

## Conclusion.

Up to and on April 24, 1914, the petitioner operated its plant in peace. Between the petitioner and its employees there was amity and accord. The employees of the petitioner had made no complaint of either wages or conditions; they were satisfied and contented. The respondent, the Tri-City Central Trades Council, claiming to represent certain trades and crafts, but not any of the employees of petitioner, on April 20, 1914, through a committee headed by its president, Earl Galloway, demanded from the manager of the petitioner a change in the wage condition of the employees. The petitioner's manager inquired of the president of the Trades Council if he or any of the committee were or were representing any of the employees of petitioner, to which the president of the Trades Council answered that they were not, whereupon petitioner's manager declined to deal with the Trades Council, and stated that he was prepared and ready at all times to discuss any matters with the petitioner's employees. (Rec., p. 32.) Thereupon the respondent, Trades Council, entered into a conspiracy to compel the petitioner, without the request or complaint of any of its employees, to establish the scale of wages which obtained in November, 1913, and in order to accomplish its purpose, by posting and distributing circulars and otherwise sought to have employees of the petitioner abandon their work and interrupt the petitioner's business and close down petitioner's plant. Only two of the three hundred and seventy-five employees of the petitioner complied with the efforts

of the Trades Council in this regard. Thereupon, in furtherance of the conspiracy, the Trades Council, not acting for the employees of the petitioner nor at their request, and being an entire stranger to the situation, undertook to force and compel the employees of the petitioner to stop work and close down petitioner's plant by placing pickets upon and around the premises and plant of the petitioner. In consequence and in pursuance of this illegal conspiracy of the Trades Council, its pickets so placed there persisted and continued to annoy, harass, intimidate, beat and in many instances slug into a state of insensibility a very large number of the employees of the petitioner. Still being unsuccessful in its illegal conspiracy, the Trades Council threatened that unless the petitioner would comply with its demands it would destroy petitioner's plant and property.

**The right of an organization such as the Trades Council, an entire stranger, not representing nor acting for either employer or employee, to undertake to force the employer to pay a different scale of wages than that agreed to and satisfactory to both the employer and employee, and for the accomplishment of such illegal purpose conspire to interfere with the business and property of the employer and by intimidation and assault to compel and force the employees to leave their places, abandon their work, violate their contract obligations with the employer, interrupt the employer's business, close down its plant, and, if necessary, destroy it, is a proposition to which the Circuit Court of Appeals by its decision in this case has given assent, but which this**

court has not yet, so far as we have been able to discover, considered or decided.

If what was done in the case at bar is legal, then any council or organization that represents machinists or barbers, foundrymen or bar tenders, in New York or California, in Texas or in Minnesota, or in any other state, can take upon themselves the right to interfere with distant property and business, upon the pretext, uninduced by any complaint of the employees, that the wages are too low or the working conditions unsatisfactory. Property and business are indeed insecure if such a rule can obtain. Both the employer and the employee are in a position of helplessness and terrorism if such be the law. It is vital to the interests of property and of business, of capital and of labor as well, that this court, now that the question has been presented, should in no uncertain terms give expression to the law on the subject.

This presentation of the case is long, perhaps too long, but by liberal reference to the evidence in the record and liberal quotation from authorities cited, we sought and hoped to save this court both time and effort.

MAX PAM,
HARRY BOYD HURD,
WILLARD E. WHEELER,
*Solicitors for Petitioner.*

MAX PAM,
*Of Counsel.*

STATE OF ILLINOIS, }
COUNTY OF } ss.

William E. Wheeler, being duly sworn, says that he is one of the Solicitors for American Steel Foundries, the petitioner; that he, together with the other counsel named, prepared the foregoing petition; that the allegations thereof are true, as he verily believes.

.....

Subscribed and sworn to before me, this ..... day of ....., A. D. 1917.

.....

*Notary Public, ..... County, Illinois.*

## APPENDIX "A."

### Judge Humphrey's Opinion.

The law is very well settled, I think so well settled that there can be no dispute with the court or between counsel, as to the rights of the parties. It is not a new question; not so old in this country as in Europe, but still it is not a new question even in this country.

Men have a right to combine their capital and create artificial bodies for the carrying on a great works, works so great no one man could do it. That is a combination. The law recognizes it. It is legal. The progress of the world has been marked more among the nations which permit this combination than anywhere else in the world.

In order to carry on these great works, something besides capital is necessary. Something more important than capital; something more human than capital; something that touches the people more tenderly than capital. That is labor. So the law provides, wisely provides, that a man who has labor to sell may combine with his fellows for the purpose of helping his own condition, or getting more for the commodity which he brings to the public service than he would if he were not organized, and that brings us near to the point of conflict. The manufacturer, the corporation, has work to do. It offers a price, the price which in its judgment the market would justify. The man or men who have the labor to sell try to meet that price.

They cannot do it always. They say we will exercise the privilege, which the law gives us, to refuse to work for you. A and B join with C, D, E and F, and they have a right to do that and say they won't work for you individually, or in a body. Now that is a lawful right, but the very statement of that right contemplates that any other man, or any other body of men, organized or unorganized, has a right to sell his or their labor at the price offered if he wants to.

Now you see how absurd it would be to affirm one of these doctrines and disaffirm the other. The very basis of law on which the labor union exists contemplates that the man who does not belong to the labor union has the same right to exercise his own judgment as to the price at which he will sell his labor. When you consider all these things, the man's home necessities, the man's wants, the size of his family, his condition in life, whether or not he has a nest egg laid away, whether or not he has a bank account, is the controlling feature with him. One man moves from one motive and refuses; another man moves from another motive and says, "Yes, I will work at the price you offer; the wages are satisfactory and the conditions are satisfactory." Then we are up to the time when the law is called upon to decide whether the man or the group which refused to work shall say that the man who wants to work shall not work. You see what an absurdity it would be to affirm that doctrine.

This bill is brought upon a theory different from most of the bills in the books. This bill charges a

combination, a conspiracy. The purport of that combination is to prevent this complainant from running that factory unless it runs it at a certain scale of wages. Now such a combination is unlawful. Extend that doctrine to the other trades of life, where the thing to be bought and sold is not labor. You see where you would land. Everything we eat and everything we wear has been so high in recent years as to confound and confuse some of us almost to the verge of madness. Suppose Mr. Wheeler and Mr. Smith and I should combine and say to the merchant who sells groceries he should sell them to us at a lower price and that he shall not do business unless he does it. Do you think any law could sanction that? Do you think it would help us any when we were defeated on the doctrine to say that we will be satisfied if he will arbitrate the price of sugar and coffee and let us call in a lot of fellows to say what they will be sold at? Do you see how absurd all that is? Everything of that nature takes away an important doctrine upon which the American Government rests, viz., the freedom of the individual to contract. If a man has anything to sell—suppose a farmer has a load of hogs, fat and fine, and the middle man wouldn't give him what he thinks they are worth. He says we will just arbitrate this matter; call in the other farmers in the township and let them arbitrate how much you should pay for hogs. Suppose the grain man should be met with that doctrine by the grain growers. You men should put yourselves in the position of having something to sell which the other man wants to buy, and since the beginning of government there is no

other way. You only make progress where your minds agree. You can't do things by compulsion. You can't do things by combining to compel the other fellow to make a different contract from the one he wants to make. We wouldn't be a republic if we did that. We would't be a democracy if we did that. The very idea of your right to combine for proper purposes contemplates, presupposes, that the man who does not agree with you and who does not belong to your combination shall have the same right to work at a different rate. Now that is the law, and there is no other view to take of it. This evidence clearly shows that this union, this trades council, by the testimony of its officers, entered upon the work of preventing this complainant from getting men to run its factory, run its plant, except upon the condition that it pay a certain scale, the November scale. That combination was illegal. They hadn't any right to do it. When the company several months later undertook to run on a different scale of wages they contracted with certain men, who did not belong to the union, to work for them. These men have said upon the stand they were willing to work; the wages were satisfactory; the conditions were satisfactory, but that they didn't work because they were afraid of the defendants.

Now a man who doesn't want to work at a certain wage has a right to withdraw; another man who does want to work under those conditions and for those wages has an equal right to work without being interrupted, and the first man shall not interfere with the second.

Work is the condition of us all. No man is of any account in this world without it; no matter what character the work may be. We are all workers or we are no good. Every man must judge for himself as to the contract of labor which is satisfactory to him. He may work, or he may decline to work, but he shall not interfere with his neighbor who desires to work, for the Government will protect such neighbor and a government that will not protect such a man isn't fit to live, and, in my judgment, will not permanently endure.

The proof here sustains the averments of the bill as to the illegal combination; such a combination cannot have the sanction of the law. The purpose being illegal, any act done in furtherance of the purpose is alike illegal whether that act be violent or peaceful.

However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position and having these cases frequently before me has taught me that there is no such thing as peaceful picketing. Some of the courts, in an early day, possibly some yet, talk about peaceful picketing. You have a right to talk to your neighbor about working; talk to him about the conditions under which he is working; talk to him about the strike; talk to him about all those things if he wants to talk to you. Well, if he is willing to talk to you, you don't need to be a picket to get up

to him. You don't need to line the street with an unusual force which will frighten him as he comes by, because if he wants to talk to you, there is no trouble to get him. You can get to him in the morning, or in the evening, or at the lunch hour, or in the shop, if you please. If he wants to see you, it is no trouble to get to him; if he doesn't want to see you, you have no right to get to him. Now that is the law, and you see where picketing lands when you adopt that doctrine. The whole purpose of picketing, as I have observed it in these coal controversies, railroad strikes, which are infinitely worse than your little matter, the whole purpose is to make such show of force the man will be intimidated before he gets to you. There could be no other purpose in it, because if it is peaceful, if you are only going to speak to a man who wants you to speak to him, you don't need a force of fellows to go with you.

Counsel for complainant may prepare an order finding the averments of the bill sustained and extending the injunction, making the restraining order an injunction against the union, its officers and all other persons who have had any part, as shown by the evidence, in the execution of the unlawful combination.

The injunction may go this much further; it may prohibit absolutely picketing for the purpose of executing this unlawful purpose. It may extend also to all persons who shall engage in helping or abetting the unlawful combination, whether the knowledge came to them before or after the issuing of this in-

junction. Let the injunction be printed and posted liberally in the vicinity of the works.

Perhaps I ought to say to you gentlemen who are the officers of the defendant union, that the court regards it as your duty to explain to those who are not here and to those who are here, if necessary, just what the purpose of this order is, and that it is their duty to obey it, for the court will find some means of enforcing its order.

## APPENDIX "B."

### Circuit Court of Appeals Opinion.

Before Mack, Alschuler and Evans, Circuit Judges.

Appellants, herein called defendants, appeal from the final decree entered in favor of appellee, herein called plaintiff, enjoining defendants as follows:

> "It is further Ordered, Adjudged and Decreed by the Court that the said defendants, the Tri-City Central Trades Council, its officers and agents, and Harry McKenny, Ted Ishman, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever, be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever, by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestion of danger any of the employees of the American Steel Foundries or persons seeking employment with

it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of the said American Steel Foundries; and from protecting, aiding or assisting any person or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries, for the purpose of doing, or aiding, or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property, and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the American Steel Foundries."

Plaintiff instituted this suit to prevent alleged threatened injury to its business and threatened destruction of its manufacturing plant, located at Granite City, Illinois, claimed to be worth $1,000,000, which it alleges the Tri-City Trades Council, a labor organization and other defendants, former em-

ployees of plaintiff or members of the Council were injuring and threatening to destroy. It alleges the Tri-City Trades Council attempted to force plaintiff to raise the wage paid its employees, and to accomplish its object called a strike of plaintiff's employees. In the course of the strike picketing was resorted to, and the defendants sought the support of non-striking and prospective employees. Plaintiff further claimed that its employees were assaulted by defendants and by those engaged in picketing the shops, and that prospective employees had been so intimidated by defendants that they refused to enter plaintiff's employment.

The gravamen of the plaintiff's bill is found in the following, therefrom:

> "Your orator further represents that the said defendants have combined and conspired to prevent your orator from employing skilled laborers at its plant, although such skilled laborers and your orator have agreed upon terms of employment that are mutually agreeable and satisfactory; that in carrying out such combination and conspiracy the defendants began picketing said plant of your orator on or about April the 23rd, 1914; that the said defendants on April 23rd and since that time have caused various numbers of men or pickets, to-wit: five to thirty men to be stationed adjacent to the main gate of your orator's said plant, which said pickets from that day until the present time have threatened to assault, mistreat and injure various of the employes of your orator unless said employes ceased from their work; that said defendants so combining did on April 29th, 1914, cause two of your orator's employes to be assaulted by said pickets," etc.

Defendants denied any and all acts of violence or assaults of any nature. On the other hand, they claimed that strike-breakers attempted to shoot the striking employees, and were urged so to do by representatives of plaintiff.

Defendants also denied the existence of any unlawful conspiracy among them, but did admit

> "that said Tri-City Central Trade Council did place certain ones on certain streets and avenues leading to said plant charged with doing picket duty, but such ones were stationed 100 yards from such mill and they were instructed to notify all persons who sought to enter the plant, that there was a strike on, because of such reduction in wages, and such pickets were instructed to use all honorable means to persuade such ones to not enter such plant, and not to take the places of the laboring men, who had gone on a strike on account of such reduction of wages."

The District Judge in rendering his opinion said:

> "This evidence clearly shows that this union, this Trades Council, by the testimony of its officers entered upon the work of preventing this complainant from getting men to run its factory, run its plant except upon the condition that it pay a certain scale, the November scale. That combination was illegal."

Speaking of picketing, he said:

> "However, speaking upon this question, I should say a word about picketing. There is no such thing as peaceful picketing. You might as well talk about peaceful violence. You may as well think of peaceful war as peaceful picketing. Considerable experience in this position, and having these cases frequently before me, has taught me that there is no such thing as peaceful picketing."

Defendants attack the decree on three grounds:

(a) The evidence does not justify the issuance of any injunction.

(b) The restraining order is too broad and restrains defendants from doing lawful acts.

(c) The court is without jurisdiction, because the amount involved does not exceed $3,000.

Evans, Circuit Judge, delivered the opinion of the court.

Defendants' claim that the court was without jurisdiction is without merit. The necessary diversity of citizenship appears. The amount involved exceeds $3,000. It was not necessary that $3,000 worth of property should be destroyed before the Federal court acquired jurisdiction. The alleged threatened damage far exceeded the statutory sum necessary to give the district court jurisdiction.

Defendants contend that the evidence did not justify the court in granting any injunction. We are not able to say that the record presents a situation that did not warrant some action by the court. It is apparent that a situation had developed where fights had occurred and threats had been made which if carried out would have resulted in the destruction of property. The district judge heard and saw the witnesses, and we accept his conclusion that such evidence justified the issuance of an injunction to restrain the defendants from the commission of certain unlawful acts.

But the court also enjoined the defendants:

> "from picketing or maintaining any picket or pickets on or about the streets leading to the premises of the plaintiff."

And the order continued:

> "It is further ordered * * * that the said defendants * * * be and are perpetually restrained and enjoined * * * from doing any acts or things whatever in furtherance of any conspiracy or combination among them, or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid."

The obvious effect and purpose of this decree was, among other things, to prevent all picketing by the defendants or others similarly interested, and to prevent these parties from persuading their fellow employees to join them in their effort to secure what the strikers apparently considered the laborer's just demands.

In *Iron Molders' Union* 125, *Milwaukee*, v. *Allis-Chalmers Co.*, 166 Fed., 45, the rule is so well stated that we quote from it the following:

> "The right to persuade new men to quit or decline employment is of little worth unless the strikers may ascertain who are the men that their late employer has persuaded or is attempting to persuade to accept employment. Under the name of persuasion, duress may be used; but it is duress, not persuasion, that should be restrained and punished. In the guise of picketing, strikers may obstruct and annoy the new men, and by insult and menacing attitude intimidate them as effectually as by physical assault. But from the evidence it can always be determined whether the efforts of the pickets

> are limited to getting into communication with the new men for the purpose of presenting arguments and appeals to their free judgments. *Prohibitions of persuasion and picketing, as such, should not be included in the decree.*"

Labatt in his work on Master and Servant, Vol. 7, page 8364, says:

> "Attendance in the vicinity of the employer's place of business for the purpose of obtaining information as to those at work there, or of communicating the information that a strike is in progress, to those who may resort for employment, is uniformly regarded as lawful even where the right to maintain pickets for the purpose of persuasion is denied."

The same writer further says:

> "The preponderance of opinion is to the effect that attendance even in numbers, for the purpose of lawfully persuading others not to work, is permissible, so long as it is not carried on in such a manner as to intimidate persons at work, or seeking employment, or to subject them to undue annoyance, or to interfere with the free access to the employer's premises."

Further authorities in support of the rule laid down in the *Iron Molders Union* v. *Allis-Chalmers Co.* case, *supra*, are, *Gray* v. *Building Trades Council*, 91 Minn., 171; *Karges Furniture Co.* v. *A. W. Local Union*, 165 Ind., 421; *Everett* v. *Typo Union*, 105 Va., 188; *In re Heffron*, 179 Mo. App., 639; *Jones* v. *Maher*, 116 N. Y. Supp., 1126; *Jones* v. *Van Winkle Gin & Mach. Works*, 131 Ga., 336; *Pope Motor Car Co.* v. *Keegan*, 150 Fed., 148.

But it is contended that the decree in these respects was proper because

(a) The restraining order does not prohibit picketing *per se*, but restrains defendants from carrying out an unlawful conspiracy to destroy plaintiff's business; that in order to prevent the defendants from accomplishing the unlawful object of the conspiracy, it was necessary for the court to restrain the defendants from picketing the plaintiff's works, and prohibit them from arguing their cause with plaintiff's employees.

(b) Defendants were not plaintiff's employees, but were mere outsiders, intermeddlers who were not truly representing the employees, but were trouble makers, fomenting strife and trouble where labor conditions and wages were entirely satisfactory to the employees.

Plaintiff's contention that a court may restrain lawful acts of striking employees when committed to carry out the purpose of an unlawful conspiracy to destroy the employer's business is supported by many authorities. Among them are *Sailor's Union* v. *Hammond Lumber Co.*, 156 Fed., 450; *In re Debs*, 158 U. S., 564; *Barnes* v. *Typo Union*, 232 Ill., 424; *Karges* v. *Woodworkers Union, supra.*

If the record disclosed the existence of an unlawful conspiracy on the part of the defendants to injure or destroy plaintiff's property the court would be clearly justified in restraining lawful as well as unlawful acts committed in furtherance of such a conspiracy.

If the purpose of the undertaking complained of were purely and simply, or even primarily, interference with the plaintiff in the conduct of its business as alleged, no act however innocent in itself,

directed to that end can be said to have a lawful purpose for its doing. Indeed, it may well be said that any act directed to that end is not a lawful act. If, on the other hand the object of the undertaking is unlawful, then the acts calculated to effectuate the object do not necessarily become unlawful merely because they interfere with the plaintiff's conduct of its business.

The right to strike to secure higher wages and improved conditions of labor is too firmly established to necessitate further elucidation. From the record here we can reach no other conclusion than that the object of this strike was to secure for plaintiff's employees the November wage scale of the union. Nothing appears in the record to indicate that this was not in good faith, or to raise the suspicion that the strike was a mere cloak to cover a deliberate purpose to interfere with the plaintiff's conduct of its business, or to injure and destroy its business and property. The purpose being lawful, if unlawful means are used to effectuate it, such means cannot be made to reach back and taint the purpose itself with unlawfulness, and thus render unlawful all the acts in its furtherance.

In the pursuit of a lawful purpose to secure a raise in wages, picketing may be employed, as this court has held, to ascertain whom the late employer:

> "has persuaded or attempted to persuade to accept employment,"

and persuasion may be used to induce them to refuse or quit the employment. As stated further in the *Allis-Chalmers* case:

> "The right of the one to persuade (but not coerce) the unemployed to accept certain terms is limited and conditioned by the right of the other to dissuade (but not restrain) them from accepting. * * * Molders, having struck, in order to make their strike effective, may persuade (but not coerce) other molders not to work for less wages or under worse conditions than those for which they struck, and not to work for their late employer at all, so that he may be forced to take them back into his foundry at their own terms."

Undoubtedly picketing and persuasion would interfere with plaintiff's conduct of its business, in that it would make it more difficult for it to retain old employees and to hire and keep new ones. Indeed, the very act of striking often seriously interferes with that "free and unrestrained control and operation of the employer's business" which the plaintiff here alleges as an object of the conspiracy charged; but the lawfulness or unlawfulness of the strike is not to be tested by such incidental effect of it. And so it is with persuasion and picketing, properly carried on in the interest of a lawful strike.

The laborer may be strictly within his rights although he obstructs the "free and unrestrained control and operation of the employer's business." The right to strike must carry with it by implication the right to interfere with the employer's business to a certain extent. The right to persuade prospective employees by legitimate argument must of necessity interfere with the employer's business. Where labor is essential to the successful conduct of a business, any interference with that labor is an interference

with the employer's business. But whether the interference with the business is lawful or unlawful depends upon the facts in each case.

The order in the instant case fails to recognize this difference between the *lawful* means of interfering with another's business as an incident to the party's own right and *unlawful* means adopted by the same party. Methods may be considered lawful even though the employer's business is interfered with, because such methods are incidental to the right of the employee, which right should be and is recognized as equal to the right of the employer.

Plaintiff's further contention that the defendants were not its employees at the time of the strike, and therefore had no right to picket or persuade by argument those about to enter plaintiff's employment is not well taken. It is true, a striker is not technically an employee. The relation of employer and employee is temporarily suspended during a strike. The situation has been described as

> "A relationship between employer and employee that is neither that of a general employer and employee, nor that of employer and employee seeking work from them as strangers."

Neither strike nor lockout fully terminates during the strike the relationship between the parties.

Among the defendants in this case there were some former employees. Many of the plaintiff's employees at the time of the strike were members of the defendants' organization, the Tri-City Central Trades Council. These facts disprove the charge that the defendants were merely intermeddling in the affairs of a company in which they had no interest. Under

these circumstances, it cannot be said that the labor organization was an intermeddler or that its course was contrary to the wishes of its members or the wishes of the plaintiff's employees.

Insofar as the decree restrains *all* picketing and *all* persuasion and all interference with the plaintiff's free and unrestrained control of its plant and the operation of its business, it transcends the limit of proper restraint, and should be modified so as to eliminate therefrom any restraint of defendants from doing lawful acts as indicated herein. The order of this court for the modification of the decree in the *Allis-Chalmers* case will afford sufficient and proper guidance for the modification of the decree herein.

The decree of the District Court is reversed, with direction to modify the same, and to enter a decree, in accordance with the views herein expressed.

## APPENDIX C.

### Final Decree.

This cause came on to be heard at this Term on the 9th day of June, A. D. 1914, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

That the restraining order heretofore issued on May 18th, 1914, and which on May 28, 1914, was continued in force as a temporary injunction, be and is hereby made permanent as to all of said defendants, with the exception of the defendant C. L. Burton, and as to the said C. L. Burton the said restraining order and temporary injunction be and is hereby vacated.

It is further ordered, adjudged and decreed by the court that the said defendants, the Tri-City Central Trades Council, its officers and agents and Harry McKenny, Ted Ishmann, Earl Galloway, William Thornberg, C. Thornberg, Tom Churchill, Clay Holmes, Eddie Roach, John Aldridge, Isaac Cook, Benj. F. Lamb, J. P. McDonough, and C. E. Gerlich and each of them and all persons combining with, acting in concert with or under their direction, control or advice, or under the direction, control or advice of any of them and all persons whomsoever be and are hereby perpetually restrained and enjoined from in any way or manner whatsoever by use of persuasion, threats, or personal injury, intimidation, suggestion of danger or

threats of violence of any kind, from interfering with, hindering, obstructing or stopping, any person engaged in the employ of the American Steel Foundries in connection with its business or its foundry in the City of Granite City, County of Madison, State of Illinois, or elsewhere; and from interfering by persuasion, violence or threats of violence in any manner with any person desiring to be employed by said American Steel Foundries in its said foundry or plant; and from inducing or attempting to compel or induce by persuasion, threats, intimidation, force or violence or putting in fear or suggestions of danger any of the employees of the American Steel Foundries or persons seeking employment with it so as to cause them to refuse to perform any of their duties as employees of the American Steel Foundries; and from preventing any person by persuasion, threats, intimidation, force or violence, or suggestion of danger or violence, from entering into the employ of said American Steel Foundries; and from protecting, aiding or assisting any person, or persons in committing any of said acts; and from assembling, loitering or congregating about or in proximity of the said plant or factory of the American Steel Foundries for the purpose of doing, or aiding or encouraging others in doing, any of the said unlawful or forbidden acts or things; and from picketing or maintaining at or near the premises of the complainant, or on the streets leading to the premises of said complainant, any picket or pickets, and from doing any acts or things whatever in furtherance of any conspiracy or combination among them,

or any of them, to obstruct, or interfere with said American Steel Foundries, its officers, agents or employees, in the free and unrestrained control and operation of its plant, foundry and property and the operation of its business; and also from ordering, directing, aiding, assisting or in any manner abetting any person committing any or either of the acts aforesaid; and also from entering upon the grounds, foundry or premises of the American Steel Foundries without first obtaining its consent; and from injuring or destroying any of the property of the said American Steel Foundries.

It is further ordered, adjudged and decreed that the complainant shall cause not less than one hundred printed copies of this final decree to be posted in conspicuous places about and in the vicinity of its said plant at Granite City, Illinois; that the affidavit of the agent of the complainant so posting said notices shall be filed in the Clerk's office stating when and where such notices were posted, and such affidavit shall be *prima facie* proof of the posting of such notices at such time and places as shall be therein stated.

It is further ordered, adjudged and decreed that this injunction shall be binding upon each and all of the above mentioned defendants and upon all other persons from and after the date of this decree.

It is further ordered, adjudged and decreed that the defendants pay the costs of the above entitled cause to be taxed by the Clerk.